IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

LANE H MILLER Claimant **HENNIGES AUTOMOTIVE IOWA INC** Employer	**APPEAL 16A-UI-11210-JP-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/11/16** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 6, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2016. Claimant participated. Employer participated through senior human resources generalist Monica Cochran.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production employee from July 6, 2015, and was separated from employment on September 15, 2016, when he was discharged.

On September 9, 2016, claimant was observed exhibiting some odd behavior by the employer. The supervisors contacted the human resources manager, Shelly Curran, and the decision was made to take claimant to the hospital for a reasonable suspicion drug/alcohol test. According to the employer's written drug and alcohol policy, employees are not allowed back in the building after a test based on reasonable suspicion until the employer receives the test results. Late on September 9, 2016 or early on September 10, 2016, Ms. Curran reminded claimant at the hospital that he was not allowed back into the building until the employer receives his test results. There was a union steward present while claimant was at the hospital. Claimant testified he does not recall Ms. Curran being at the hospital; however, other people told him that Ms. Curran was at the hospital and he trusts those people.

On September 10, 2016, at approximately 2:30 a.m., claimant entered the employer's building. Claimant was not scheduled to work at this time. Claimant came to the employer to retrieve his backpack that he had left there on September 9, 2016. Claimant had left the backpack in the work area. Claimant went to the first aid department area to look for his backpack. There are two sets of doors claimant had to go through to get to the first aid department. The first set of doors is unlocked, but the second set of doors is locked. When claimant got to the doors, he

contacted security to let him through the second set of doors and into the first aid department. After claimant contacted security he tested the second set of doors and discovered they were unlocked. Claimant did not wait for security and instead went through the second set of doors. Claimant started looking for his backpack in the first aid department. When security arrived, claimant was still in the first aid department. Security asked claimant what he was doing and told him that he was not allowed past the second set of doors. Claimant did not tell security he was looking for his medicine in his backpack. Security then escorted claimant out of the building and to the front parking lot without his backpack. Claimant testified that security acted like he was an employee. Ms. Cochran testified that security does not normally escort employees to the parking lot. Once claimant was in the parking lot, he left the area.

Later on September 10, 2016, claimant returned to the employer and again went inside the building. Claimant was still not scheduled to work at this time. A supervisor observed claimant and approached him. Claimant told the supervisor he was getting something out of his locker. Claimant did not tell the supervisor what he needed out of his locker. The supervisor allowed claimant to retrieve the item, Tylenol, out of his locker and then the supervisor told claimant he had to leave.

On September 12, 2016, the employer met with claimant and put him on a three-day unpaid suspension for entering the building on September 10, 2016. A follow up meeting was scheduled for September 15, 2016.

On September 15, 2016, the employer met with claimant and a union steward. The employer told claimant he was discharged because of the incidents on September 10, 2016. Claimant was discharged for being in the building when he was not allowed to be there and for being in a locked area of the building. Claimant retrieved his backpack at the termination meeting on September 15, 2016. Claimant never told the employer that he needed the backpack because it had his medication in it.

When claimant usually comes to work, there is a security guard working, but claimant can just walk in, he does not need a pass key. The first aid department is locked and claimant would need to be let into the area because he does not have a key to that area. On Saturday morning, there would not have been an employee working in the first aid department.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 96.5-2-a provides:

> An individual shall be disqualified for benefits:
>
> 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
>
> a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.,* 275 N.W.2d 445, 448 (Iowa 1979).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Prior to 2:30 a.m. on September 10, 2016, the employer reminded claimant he was not allowed into the building until it received his test results. Around 2:30 a.m. on September 10, 2016, claimant ignored the employer's directive and entered the employer's building. Claimant went to

the first aid department, which is usually locked, to get his backpack. It is noted that claimant had left his backpack in the work area, not the first aid department. Claimant testified he needed the medicine out of his backpack; however, he never told the employer his backpack contained medicine that he needed. Claimant was aware the first aid department was restricted and contacted security to let him in; however, he discovered the door was unlocked prior to security arriving and instead of waiting for security, he entered the restricted area and began looking around. When security caught claimant they escorted him out of the building and into the parking lot. Ms. Cochran credibly testified that security does not normally escort employees to the parking lot. Even if claimant had not initially been aware he was not allowed to be in the employer's building until the test results were returned, having security escort him to the parking lot should have put him on notice that he was not allowed in the building. However, claimant returned to the building later on September 10, 2016 and again entered the building. Claimant was discovered by the employer and again asked to leave.

Claimant clearly violated the employer's directive to stay out of its building on more than one occasion. The employer has presented substantial and credible evidence that claimant entered the employer's building and a restricted area after having been told he was not allowed in the building and in violation of the employer's policy. Claimant's conduct was contrary to the best interests of the employer. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The October 6, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jeremy Peterson
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs