

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MANUT M WOL**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 18A-UI-03050-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/04/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 5, 2018, (reference 01) unemployment insurance decision that denied benefits based on his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on April 3, 2018. The claimant participated and testified. The employer participated through Senior Human Resource Coordinator Danielle Williams. Employer's Exhibit 1 was received into evidence.

**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 finishing technician from December 14, 2016, until this employment ended on February 9, 2018, when he was discharged.

Employees in claimant's position are allowed two ten-minute breaks and one 20 minute break for each eight hour shift. This policy is outlined in the employee handbook, which claimant received a copy of upon hire. (Exhibit 1, page 11). On February 8, 2018, claimant took a 31 minute break during his 20 minute break period. Claimant testified he took a longer break because he did not have enough time to both eat and use the restroom within the allotted 20 minutes. Claimant further testified he did not think he had gone that far over the allotted break time.

This was not the first time claimant had been documented by the employer as taking a longer break than allowed. From August 2017 until the time of claimant's separation there were seven other documented incidents when claimant took more than the allotted break time. (Exhibit 1, page 5). Claimant was given coaching with four of these incidents, was given written warnings twice, and was suspended on December 8, 2017. The final written warning was issued on January 31, 2018 and included a warning that further incidents could lead to more discipline,

including termination. (Exhibit 1, page 7). Claimant testified he does not read English and therefore did not understand what the warnings said. Claimant also acknowledged he did not give the employer any indication that he could not read the document or was confused about what the warnings were for. When claimant was late again on February 8, the decision was made to end his employment. (Exhibit 1, page 6).

## **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.

Iowa Code section 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.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in

testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to take long breaks after having been warned. Claimant received numerous coaching about this behavior, as well as two written warnings and a suspension. The final warning was given just ten days prior to his termination. Claimant contends he did not understand the written warnings because he cannot read English, but made no attempts to notify the employer of this and did not dispute that he was able to understand the information given to him verbally. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

**DECISION:**

The March 5, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he 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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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs