

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATHAN R ADAMS
Claimant

REGION XII COUNCIL OF GOVT
Employer

APPEAL 20A-UI-09601-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct
Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), PL 116-136, section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

Nathan R. Adams filed an appeal from the May 12, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held October 21, 2020. Adams participated and testified. Region XII Council of Governments participated through Tom Feldman, the transit director and Adams's immediate supervisor.

ISSUE:

Did Region XII discharge Adams for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Region XII hired Adams on September 8, 2019. Adams worked full time as a transit driver. Region XII discharged Adams on February 20, 2020.

Adams drove students from school districts to Woodward. Feldman gave Adams's cell phone number to staff at the school districts so they could notify Adams when a student did not need transportation. Feldman informed Adams he did so to allow for direct communication, which made it easier for Adams and the staff at the schools.

Feldman and Adams communicated regularly. Feldman had multiple meetings with Adams. During one of the meetings, Feldman instructed Adams to come to him if he had any communication issues relating to his job.

Jill Anthover was a transit assistant who schedules drivers. She worked under Feldman's supervision. Anthover considered herself Adams's immediate supervisor because she did the scheduling.

Anthover did not like school district staff contacting Adams when a student needed a ride. She wanted the school district staff to contact her by calling the Carroll office for Region XII, where she worked, or by calling her mobile phone. Anthover told Adams this each time Adams notified her that a school district called him and told him that a student did not need a ride.

On February 13, 2020, school district staff notified Adams a student did not need a ride. Adams relayed the information to Anthover. She got upset with Adams because school district personnel notified him that a student did not need a ride. This was the last straw for Adams.

That evening, Adams sent text messages to Anthover and Paul Scott, a temporary transit office assistant. Adams stated in the text messages that Region XII “upper management sucks.” He informed Anthover and Scott that he was done communicating with them. Adams also informed them that he had blocked one of the school district staff’s numbers on his mobile phone so the staff could no longer contact him directly. He also told Anthover and Scott to “get [their] poop in a group.”

Adams worked Friday morning, then informed Region XII that he was ill. Region XII makes the Monday schedule on Friday afternoon. Because Anthover and Scott did not know if Adams would be able to work due to his illness, they did not put him on the Monday schedule.

On Monday, Feldman returned to the office. Anthover and Scott informed Feldman about the text messages Adams sent them. Feldman attempted to contact Adams by calling him and sending him text messages. Adams replied by text messages multiple times saying he would contact Feldman but did not do so. Feldman told Adams by text message to contact him as soon as possible. But Adams did not respond that day.

On Tuesday morning, Feldman followed up with another text message to Adams, requesting he contact Feldman as soon as possible. Adams did not respond. Region XII provides drivers with a tablet to allow them to communicate with schedulers. Neither Anthover nor Scott received any communication from Adams through the tablet that day. Region XII removed Adams from the Wednesday work schedule because they had not heard back from him, despite Feldman’s requests, and did not know what his intentions were.

On Wednesday, Adams called Feldman during the lunch hour. Adams stated he could not call Feldman sooner because his daughter had broken his mobile phone. Feldman told Adams that they needed to discuss some serious issues. Adams said he could meet the next morning. Feldman met with Rick Hunsaker, the Region XII executive director, and the two of them decided to discharge Adams due to his contact over the preceding week. On Thursday, Feldman informed Adams of the decision.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes Region XII discharged Adams from employment due to job-related misconduct.

Iowa Code section 96.5(2)(a) disqualifies an individual from unemployment insurance benefits if the employer discharged the individual for misconduct. The statute does not define “misconduct.” But Iowa Administrative Code rule 871-24.32(1)(a) does:

“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.

The Iowa Supreme Court has consistently held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. *See, e.g., Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, (Iowa 2016) (superseded on other grounds by 2017 Iowa Acts ch. 70, § 3 (codified at Iowa Code § 96.5(11)) (citing *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 9 (Iowa 1982)).

The employer has the burden to prove misconduct that makes a claimant ineligible for unemployment benefits. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

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).

Region XII is in a rural part of the state. It provides transit services to school districts in various communities. Consequently, communication between its drivers, other Region XII staff, and the school districts is important. Good communication helps ensure that Region XII is providing transit services to students who need them, when they need them.

Feldman instructed Adams to come to him if he had any communication issues. When Adams had an issue with Anthover regarding who school districts were contacting regarding their transit needs after Feldman gave Adams's mobile number to staff at the school districts, he did not notify Feldman. Instead, he sent a series of inappropriate text messages to coworkers. Adams told them he was done communicating with them despite the fact they were schedulers for him as a driver. Adams also blocked one of the school district employees from being able to call him. Further, Adams stated that Region XII “upper management” sucks.

After that, Adams was unresponsive to Feldman's attempts to contact him. He gave excuses for not contacting Feldman despite Feldman asking him to do so as soon as possible. Adams's lack of communication caused Region XII to remove him from the driving schedule.

An employer has the right to expect its employees to communicate professionally with one another. Adams's text messages to Anthover and Scott were unprofessional. An employer also has the right to expect its employees to follow work directives. Adams did not report the issues he was having with Anthover despite Feldman instructing him to come to him if he has any communication issues as a driver. He also did not respond to Feldman's requests that Adams contact him as soon as possible.

For these reasons, Region XII has met its burden and proven that it discharged Adams for misconduct under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a). Adams is therefore disqualified from benefits.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The May 12, 2020 (reference 01) unemployment insurance decision is affirmed. Region XII discharged Adams due to job-related misconduct. Benefits are withheld until such time as Adams has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Pandemic Unemployment Assistance (PUA) Under the Federal CARES Act

Even though Adams is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the CARES Act. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if Adams is eligible for such compensation for the week claimed.

This decision does not address whether Adams is eligible for PUA. For a decision on such eligibility, Adams must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.



Ben Humphrey
Administrative Law Judge

October 23, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>