

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DANIEL MORTON**  
Claimant

**CINTAS CORPORATION NO 2**  
Employer

**APPEAL NO. 20A-UI-01069-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/12/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 4, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 20, 2020. Claimant participated personally. Employer participated by hearing representative Thomas Kuiper and witness Aaron Davis.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 19, 2019. Employer discharged claimant on January 3, 2020 because claimant had not come forth to employer when his license had been suspended.

Claimant worked as a service sales representative for employer driving a van to sites to do carpet cleaning. On or around October 28, 2019 claimant's license was revoked for the nonpayment of fines and costs. Claimant did not tell employer that his license had been suspended until December 19, 2019. Employer terminated claimant from his job and knew or should have known of his license being suspended a month and a half earlier while he continued to drive company vehicles.

Employer stated that they could have worked with claimant if he had approached employer at the time of his suspension. Instead, employer argued that claimant continued to drive a vehicle for which he could not be insured as he had no license, instead of taking another position as a non-driving worker until his suspension ended.

Employer stated that a coworker heard claimant talking to a third party about not having a license. The coworker suggested claimant go to his supervisor and tell them he had no license. Claimant then did so.

Claimant stated that he had no idea that he didn't have a license until the day before he approached his manager.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

It is the duty of the administrative law judge as 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 may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. 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*, Id. 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 believable evidence; whether a witness has made inconsistent statements; the witness's appearance, 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*, Id. In this matter, it is not credible that the claimant did not know of his license being suspended for over a month and a half after the suspension had started. The administrative law judge determines that claimant had either chosen not to tell employer, or had individually decided that it didn't matter that his license had been suspended.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning being forthright once his license was suspended.

The last incident, which brought about the discharge, constitutes misconduct because claimant completely ignored the best interests of his employer in not sharing the suspension with the employer. Claimant betrayed the trust of employer and put them at great risk in having a person drive who was not insurable. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 4, 2020, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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