

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JASON D STARK**  
Claimant

**TEAM STAFFING SOLUTIONS INC**  
Employer

**APPEAL 15A-UI-14124-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/29/15**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 18, 2015, (reference 02) unemployment insurance decision that denied benefits based upon discharge for refusal to keep working. The parties were properly notified of the hearing. A telephone hearing was held on Thursday, January 14, 2016. The claimant, Jason Stark, participated. The employer, Team Staffing Solutions Inc., participated through human resources generalist Sarah Fiedler.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a fabricator from February 5, 2015, until this employment ended on November 6, 2015, when he was discharged.

Claimant was assigned to a third-shift position with one of the employer's clients. The employer maintains a policy that an employee who needs to miss work must notify both the employer and the client site. Prior to the date of claimant's separation, he had been absent on four previous occasions during his employment. Each time, he notified the employer and the client site. While claimant notified the employer after the fact, and not before the absence occurred as the employer's policy instructed, the employer testified that claimant's prior conduct complied with the policy.

On November 6, 2015, claimant was feeling ill while working. He notified a coworker, Sherry Ball, that he was not feeling well, and he left early. Claimant did not notify his team lead, Don Horton, because Horton was performing safety committee work that day. Ball told claimant that she was acting as the team lead that day and would relay the information to Horton. Claimant was not sure if he ever previously informed a coworker acting as a team lead of an illness or

need to leave early. He did not call the employer to inform anyone that he had left work. The employer testified that it only became aware that claimant had left work after reviewing the client's security camera footage.

Later that day, claimant received a voicemail message from Eric Bartholomew, an employee of the employer who worked at the client's site. Bartholomew told him that his assignment had ended due to abandonment and that he was no longer employed by the employer. Claimant testified that he did not call Bartholomew back because he figured he was "done for."

## **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.

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.

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).

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

During the hearing, claimant and employer presented differing accounts of claimant's last day of employment. 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 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. *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. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events credible. Claimant had previously followed the employer's policy regarding work absences on four occasions. His own actions demonstrate that he was aware of the policy and how to follow it. On November 6, however, claimant disregarded the policy, merely notified a coworker that he was feeling ill, and left the worksite. He admitted he made no effort to contact the employer. The employer has presented credible evidence that claimant violated the policy and abandoned his job on November 6. This is disqualifying misconduct, and benefits are denied.

**DECISION:**

The decision of the representative dated December 18, 2015 (reference 02) 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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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/pjs