

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**AARON OSTWINKLE**

Claimant

**APPEAL NO. 17A-UI-10772-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MYRIAD ADVISOR SOLUTIONS INC**

Employer

**OC: 09/24/17**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 13, 2017, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 8, 2017. Claimant participated personally. Employer participated by Danielle White, Kadee Miller, and Leigh White. Employer's Exhibits 1, 2, and 4 were admitted into evidence.

**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 September 26, 2017. Employer discharged claimant on September 26, 2017 because claimant improperly went around proper servers and falsified a customer's IP address in order to create a false location for the customer such that claimant might be able to get around the specific Wells Fargo server which was not working at the time.

Employer provides help desk assistance its customers, including Wells Fargo. Claimant was hired as a help desk technician for employer. Claimant's job was to help Wells Fargo customers navigate through computer difficulties with their Wells Fargo accounts.

On September 26, 2017 the Wells Fargo server in the area was down. The Pulse server used by Wells Fargo was created to be highly secure. As this server was down, claimant, in attempting to help the customer who wanted to access his account, created a new IP address for the customer which would allow claimant to enter into the Wells Fargo system bypassing the down Pulse server and getting in to the Pulse through other avenues.

Claimant had never been warned about going around Wells Fargo security systems, but a large part of claimant's business is ensuring the safety of clients' information.

Claimant stated that he'd asked multiple people if it was okay that he went around the proper Pulse server to access the system, and he was approved to do so. Employer stated that

claimant did not ask either of the employees that he stated he did. One of the employees was out on lunch during all pertinent times and the other employee was the one who came forward to management concerned about the possible problem that had occurred.

Claimant received warnings concerning other matters during his time of employment, but received no warnings concerning his accessing systems creating fake addresses to do so.

## **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.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

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 does not make sense that claimant stated he'd received approval to go around the down server through the use of a fake IP address only to have that same person go to management to alert them of claimant's actions. The administrative law judge is not inclined to believe claimant's version of events.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning proper use of a client's security systems. The last incident, which brought about the discharge, constitutes misconduct because claimant was intentionally working around the systems which formed a basis of employer's contract with Wells Fargo. Operating outside of these systems puts the entire contract at risk. 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 October 13, 2017, reference 02, 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

bab/rvs