

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EDWARD R BYRNE
Claimant

ALDI, INC
Employer

APPEAL 22A-UI-06051-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 2, 2022, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for conduct not in the best interest of employer. The parties were properly notified of the hearing. A telephone hearing was held on April 18, 2022. Claimant Edward R. Byrne participated and testified. Employer Aldi, Inc. participated through district manager Charlie Duncan and was represented by Thomas Gorman.

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 store associate from June 16, 2018, until February 13, 2022, when he was discharged.

On February 7, 2022, claimant notified employer he was exposed to COVID-19 and had COVID-19 symptoms. District manager Charlie Duncan contact claimant to discuss employer's policy of providing pay for employees who are out of work due to COVID-19. Ms. Duncan explained claimant needed to provide a photograph of a positive COVID-19 test in order to be eligible for the pay. Claimant believed he would test positive but did not want to leave the house to obtain a COVID test, so his son sent him a text message containing a photograph showing a result from a COVID test. Claimant sent the photograph to Ms. Duncan. Ms. Duncan discovered the photograph showed a negative test result, so she asked claimant to resend the photograph. He did so, and this time the photograph showed a positive test result. Later that same day, claimant sent a different photograph of a positive COVID test. This final result was shown next to a piece of mail addressed to claimant to verify that it was his test result.

Employer became suspicious of the different test results, so Ms. Duncan did some research and found the first two images were stock images of COVID results found easily on Google. When claimant returned to work on February 13, 2022, Ms. Duncan asked him about the first two test results. Claimant admitted this son sent him the images to use and that he sent them to employer knowing they were not his test results. Employer terminated claimant's employment for violating its Working Together policy, which is found in its employee handbook. The policy prohibits lying and dishonesty. Claimant was aware of the policy.

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 Dept 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

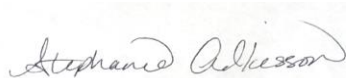
unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following 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).

Claimant knowingly submitted test results to employer that were not his own results in an attempt to remain out of work without having to obtain a test of his own. Claimant did not tell employer he was too ill to leave home to get a test. This act of dishonesty on the part of the claimant rises to misconduct as employer has a right to expect honesty, if not absolute adherence to its rules without a warning. 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.

Because claimant's separation is disqualifying, the issue of whether claimant is able to and available for work is moot.

DECISION:

The March 2, 2022, (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. The issue of whether claimant is able to and available for work is moot.



Stephanie Adkisson
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April 21, 2022
Decision Dated and Mailed

sa/jh