

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BRIAN BERENTSEN**  
Claimant

**CITY OF IOWA CITY**  
Employer

**APPEAL 22A-UI-02652-ED-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/12/21**  
**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/appellant filed an appeal from the January 5, 2022, (reference 01) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for violation of a company policy. The parties were properly notified of the hearing. A telephone hearing was held on February 22, 2022. The claimant, Brian Berentsen, participated personally. The employer, City of Iowa City, participated through Tracy Robinson and Darian Nagle-Gamm. Employer's exhibits 1-6 were offered and admitted.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a mass transit operator. Claimant was employed from February 12, 2002 until December 13, 2021 when he was discharged from employment. Susan Bethel was claimant's immediate supervisor.

On December 13, 2021, the claimant's supervisor had a phone call in follow up to an earlier incident that had occurred on December 6, 2021. On December 6, 2021, the claimant was 30 minutes tardy for work and his shift had to be covered by another individual. Claimant's clock in time was at 6:55 a.m. This occurred within three days of his coming off suspension for violating numerous rules of the road. Claimant was seen on video using his cell phone while driving, claimant was seen speeding, driving off the road, closely passing other vehicles and vaping. Claimant had been told that he had also been placed on suspension for a separate no call, no show that had been done in September.

Claimant had been given multiple opportunities to correct his behavior during the Fall. Claimant's failure to correct his behaviors resulted in his termination on December 13, 2021.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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 that the employer's testimony with exhibits is more credible than claimant's testimony.

Prior to his discharge claimant had committed in several policy violations which involved health and safety. Claimant's job duties included following the necessary and required guidelines that were in place for safety purposes.

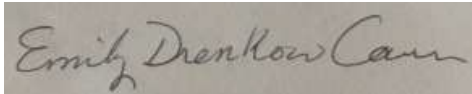
To establish misconduct that will disqualify employee from unemployment compensation benefits, employer must prove conduct by employee consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. It should not be accepted as a given fact that an employer's subjective standards set the measure of proof necessary to establish misconduct; to do so skews procedure, forcing employees to prove that they are not capable of doing their job or that they had no intent to commit misconduct, thereby impermeably

shifting the burden from employer to employee. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986).

The final incident involved a further policy violation three days after claimant had come off a suspension due to policy violations. Claimant had been counseled about the policy violations previously and knew his job was in jeopardy if he failed to follow the employer's policy. Claimant's continued actions of failing to follow the employer's policies regarding safety and sanitation constitute an intentional and substantial disregard of the employer's interest and is indicative of a deliberate disregard of the employer's interests. This recurrent negligence after being warned rises to the level of willful misconduct. As such, benefits are denied.

**DECISION:**

The January 5, 2022, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.



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Emily Drenkow Carr  
Administrative Law Judge

March 14, 2022  
Decision Dated and Mailed

ed/kmj