

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JEREN E STEFFEN**

Claimant

**ANNETT HOLDINGS INC**

Employer

**APPEAL 21A-UI-10756-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/28/21**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant, Jeren E. Steffen, filed an appeal from the April 12, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon a March 1, 2021 discharge with Annett Holdings Inc. A first telephone hearing was scheduled for July 26, 2021 with administrative law judge, Stephanie Callahan. The claimant appeared personally with Harley C. Erbe, attorney at law. The employer participated through Steve Linder, vice president of IT. The hearing was postponed to allow the employer additional time to respond to claimant’s discovery requests.

After proper notice, a telephone hearing was conducted on August 26, 2021 with administrative law judge, Jennifer Beckman. The claimant appeared personally and was represented by Harley C. Erbe, attorney at law. The employer participated through Steve Linder, vice president of IT. The administrative law judge took official notice of the administrative records. Employer Exhibits 1-17 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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: The claimant was employed full-time as a project manager and was separated from employment on March 1, 2021, when he was discharged for poor performance and poor communication.

Claimant in this case was trained on employer rules and procedures when hired. He met with his manager routinely for one-on-one meetings to discuss ongoing matters with his team, and she would offer feedback. Claimant most recently had a review in December 2020 and was given a rating of 3.2/5. Claimant had no prior warnings, discipline, performance improvement plans and was unaware his job was in jeopardy before discharge.

Claimant's immediate supervisor did not attend the hearing and employer stated the decision was made by the supervisor to discharge the claimant based upon repeated incidents of failing to communicate, miscommunicating, performing poorly and not completing tasks or assignments. Employer stated there was no specific date or single incident or final straw which led to the discharge. Claimant indicated he was performing to the best of his ability.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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.

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.

The employer in this case discharged the claimant for poor performance, poor communication and inability to complete his tasks. However, employer could not identify any specific incident or date which led to claimant's discharge, nor could it identify any instance in which the claimant had been placed on notice that his job was in jeopardy based upon how he was performing his job. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in presenting sufficient evidence to corroborate its allegation that claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**DECISION:**

The April 12, 2021, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Jennifer L. Beckman  
Administrative Law Judge  
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September 8, 2021  
Decision Dated and Mailed

jlb/mh