

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEVIN A DENCKLAU**  
Claimant

**MARINE GROUP**  
Employer

**APPEAL 17A-UI-06027-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/14/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 1, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for causing dissention among other employees. The parties were properly notified of the hearing. A telephone hearing was held on June 27, 2017. The claimant, Kevin A. Dencklau, participated. The employer, Marine Group, participated through Twyla Mead, Purchasing and Materials Manager.

**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, most recently as a shipping and receiving clerk, from January 26, 2017, until May 15, 2017, when he was discharged. On May 8, 2017, the employer received a complaint that claimant was being aggressive toward and bullying his coworkers. Mead testified that while claimant was not in a lead position and had no authority over his coworkers, he was trying to boss them around and aggressively tell them what to do. Claimant testified that he would instruct his coworker, David, to leave work at the end of the day. He claims that he was told it was his responsibility to make sure that David left at the proper time. Mead denies this. She admits giving claimant, David, and a third employee an instruction that they all needed to leave at the same time, but she denies claimant was told it was his job to ensure this happened. Mead testified that David reported claimant was making rude and snide comments to him about this issue. Mead contends claimant first raised the issue of David not leaving at the proper time during his discharge meeting. Additionally, Mead testified that David's failure to leave work at the appropriate time would not have gotten claimant into any trouble. Claimant received a two-week suspension beginning March 22, 2017, for bullying and aggressive behavior. Claimant testified that he was suspended because David would not do what he was supposed to do.

## REASONING AND CONCLUSIONS OF LAW:

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

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). 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). 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). 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).

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.*

During the hearing, claimant's demeanor was hostile and gruff. He blamed his workplace issues entirely on coworker David, who refused to leave at the proper time. When pressed on cross-examination about issues with other coworkers, claimant commented that it seemed like he was not allowed to talk to anyone about anything. The employer gave consistent statements regarding claimant's behavior at work and the end of his employment. 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 provided more credible testimony than the claimant. The administrative law judge finds the employer never instructed claimant to make sure David left work when he did.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Expecting an employee to not bully or harass his coworkers is certainly a reasonable work rule. Claimant had recently been warned for this behavior, and he was discharged less than two months after returning from a two-week suspension for aggression and bullying behavior. Claimant's continued refusal to align his behavior with his employer's expectations and his repeated aggression and bullying toward his coworkers amounts to disqualifying, job-related misconduct. Benefits are withheld.

**DECISION:**

The June 1, 2017 (reference 01) unemployment insurance decision is affirmed. 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/scn