

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**KEITH A NITZSCHKE**  
Claimant

**APPEAL NO. 19A-UI-03373-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL  
SERVICES**  
Employer

**OC: 03/03/19**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Keith Nitzschke (claimant) appealed a representative's April 19, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Aventure Staffing & Professional Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 13, 2019. The claimant participated personally and through Kelli Harder, former co-worker. The employer participated by Cyd Fleckenstein, Chief Risk Officer; Mark Rawlings, Manager Partner; and Stacia Lenz, Chief Operating Officer. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant was not a temporary employee. He was hired on January 17, 2017, as a full-time business development representative. The claimant first signed for receipt of the employer's handbook on January 18, 2017. He later signed for updated versions. He last signed for an updated handbook on December 28, 2018. The claimant signed for receipt of his job description on January 19, 2017. The job description stated he was to "build strong relationships with co-workers" "display positive leadership", and "project professionalism".

On October 13, 2017, the employer issued the claimant a verbal warning for having pornography on his work laptop. On March 6, 2018, the employer gave the claimant a written warning not properly notifying the employer of absences/tardiness. On April 18, 2019, the employer issued the claimant a written warning for attendance, insubordination, inappropriate behavior, and care of employer's property. In each warning the employer notified the claimant that further infractions could result in termination from employment.

On October 22, 2019, the employer issued the claimant a two-day suspension and ninety-day probation for inappropriate behavior, lack of respect, and failure to follow instructions. The employer told him he would be terminated for further violations.

The claimant had conflict with a supervisor. She was not his supervisor at the end of his employment. In addition, the claimant disagreed with an employer policy regarding the deletion of orders that he discovered in January 2019.

On February 15, 2019, the claimant visited a client with permission. The client complained about the claimant's co-worker who had been with the company for about thirty days. The claimant went to the co-worker's office and took her into a back room. He told her the client was frustrated with her incomplete presentation and lack of accountability. The claimant listed the client's concerns. The new co-worker heard the claimant swearing and raising his voice at her. She thought she was being reprimanded and made to feel like an idiot.

The new co-worker called the claimant's supervisor and relayed what had happened. The supervisor and the managing partner called the claimant to hear what he said about the interaction. The claimant was irritated by the questioning. He agreed that he took the co-worker in a back room and told her what the client said. The claimant thought the co-worker should have known certain information. During the telephone conversation he became angrier and he raised his voice. His supervisor said, "I don't know who you think you're talking to but you will not speak to me in that manner." They agreed to disconnect the call and speak later. The supervisor resumed the telephone conversation and asked if he was calmer. He indicated in the affirmative. She told him to cease degrading clients and staff members.

The employer investigated and decided to terminate. It could not reach the claimant's office because of two weather events. On February 27, 2019, the employer was able to reach the claimant's office and terminate him for disrespectful conduct to a co-worker and a supervisor on February 15, 2019.

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

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. He repeatedly treated co-workers unprofessionally. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

#### **DECISION:**

The representative's April 19, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs