

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DUSTIN D MOFFETT**  
Claimant

**ALL IN A DAY LLC**  
Employer

**APPEAL 17A-UI-12548-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/18/16**  
**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 November 29, 2017, (reference 05) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 28, 2017. Claimant participated. Employer participated through human resource specialist Toni Holguin and branch manager Sandra Moeller. Employer's Exhibit 1 was received.

**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: Employer is a temporary staffing firm. Claimant last worked as a full-time machinist at Hitchdoc in Jackson, Minnesota. On November 13, 2017, a representative from Hitchdoc contacted employer and requested that the assignment end because claimant was not a good fit. Branch Manager Sandra Moeller contacted claimant the same day and explained the assignment was ending. Claimant became upset and raised his voice and interrupted Moeller. Claimant used profanity. Claimant called Moeller at least three times within the next three days and behaved the same way during the phone calls. Claimant also called human resource specialist Toni Holguin and spoke in a raised voice for 12 minutes straight without allowing Holguin to speak. Finally, on November 15, 2017, Moeller informed claimant that employer would no longer work with him to find another assignment.

Employer never formally disciplined claimant for his conduct, but Moeller has previously verbally warned him she will no longer work with him if he continues to use profanity. Employer has a policy in its handbook stating employees will be terminated for insubordination or use of profanity. Claimant received a copy of the handbook.

## 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 § 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 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

In this case, claimant repeatedly called employer to discuss an assignment ending. He spoke with a raised voice and used profanity. Claimant would not stop talking and constantly interrupted those who he was speaking to on the line. As a practical matter, claimant’s behavior made it impossible for employer to work with him on finding another assignment. Claimant’s actions violated the standards of behavior that any employer has a right to expect from its employees. This is misconduct even without a prior formal disciplinary warning.

**DECISION:**

The November 29, 2017, (reference 05) 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.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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