

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**HENRY D HANNAM**  
Claimant

**NATIONWIDE MUTUAL INSURANCE CO**  
Employer

**APPEAL NO. 21A-UI-21883-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/22/21  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 1, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 22, 2021. Claimant participated personally. Employer participated by Keaton Subastian. Claimant's exhibit A was admitted into evidence.

**ISSUE:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Claimant worked as an insurance service analyst for employer. He would accept incoming calls and guide customers through their insurance questions. Employer found that claimant would, on many occasions, pick up calls made by customers and not speak. At the same time or shortly thereafter, claimant would limit his ability to get other calls by starting his after-call log while on the line.

On July 28, 2021 employer gave claimant a final written warning detailing numerous times when claimant had 'ghosted' callers by not speaking after receiving a call, only to have them hang up after a short period. Claimant's resolutions scores came in at the bottom of his team – at least partially because of the alleged call avoidance.

On August 25, 2021 claimant was terminated from his job for performance issues. Employer detailed, but did not share with claimant multiple instances of call avoidance after the warning that led to the termination. Of note were August 19 instance. During the August 19 instance, the caller stated 'hello', to which there was no response. During the call, claimant switched to the after-call mode on the computer. This blocks the claimant from receiving the next call to

come in. After a period of silence, either the caller or claimant hung up. This was classified as call avoidance, and led to claimant's termination.

Claimant stated he did not avoid calls. He insinuated that there may have been something wrong with his work phone, but did not suggest this to employer. (Claimant's phone worked just fine for the majority of calls when he was not accused of call avoidance.)

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

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. Here, although employer did not have a direct witness, employer did provide well-documented evidence including specifics of calls.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning call avoidance. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew he was not to avoid customers' calls, yet continued to do so after warning. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated October 1, 2021, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

January 3, 2022  
Decision Dated and Mailed

bab/mh