

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY D EHRESMAN**  
Claimant

**ANNETT HOLDINGS INC**  
Employer

**APPEAL 21A-UI-09103-AR-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/24/21**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On March 31, 2021, claimant, Jeffrey D. Ehresman, filed an appeal from the March 23, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination employer, Annett Holdings, Inc., discharged him for failing to perform satisfactory work even though he was capable of doing so. The parties were properly notified about the hearing held by telephone on June 1, 2021. The claimant participated personally. The employer participated through Senior Team Lead Peter Sriboonreuang. Employer's Exhibits 1 through 9 were admitted into the record.

**ISSUE:**

Did the employer discharge the claimant for 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 logistics sales representative reporting to Sriboonreuang beginning on March 4, 2019, and was separated from employment on January 30, 2021, when he was discharged.

On December 31, 2020, claimant was issued a disciplinary action that placed him on probation which lasted through January 2021. A couple of days prior to the issuance of the discipline, Sriboonreuang discovered claimant sleeping at his desk. He had also been using work equipment to stream entertainment while at work. Additionally, claimant had not been meeting productivity expectations. He had received two previous Individual Development Plans and one previous written warning—in May 2019, June 2019, and September 2019, respectively—regarding his productivity. It does not appear that claimant ever consistently met the employer's productivity requirements. The December 31, 2020, discipline noted that failure to improve, or additional instances of conduct that violated the employer's policies would result in termination.

Claimant noted that he adhered to the December 31, 2020, discipline, and did not use work equipment for non-work purposes, nor did he sleep at his desk. He admitted that he did not meet the employer's performance expectations after that date, though. Sriboonreuang and claimant met once more in January 2021 to review claimant's performance evaluation. The two again discussed claimant's failure to meet the employer's productivity expectations.

On January 30, 2021, claimant was discharged from employment by General Manager Marcy Noble for violating the employer's policies and failing to meet performance expectations.

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

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

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). 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).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon*, 275 N.W.2d at 448. Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dept of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Since the employer agreed that claimant had never had a sustained period of time during which he performed his job duties to employer's satisfaction and inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper*, 321 N.W.2d at 6. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

Employer has not demonstrated that claimant ever consistently met its performance expectations throughout his employment. Accordingly, there is no evidence of an intentional disregard of or refusal to perform the work required of him despite capability to meet expectations. Additionally, while sleeping on the job and misuse of company equipment violated the employer's policies and reasonable expectations of its employees, these incidents were too remote in time as compared to claimant's termination date, and both parties agreed that claimant did not engage in that conduct again after the December 31, 2020, corrective action. The employer has not established that claimant engaged in job-related misconduct.

**DECISION:**

The March 23, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Alexis D. Rowe  
Administrative Law Judge

June 14, 2021  
Decision Dated and Mailed

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