

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**THOMAS E JARVIS**  
Claimant

**HJD SUB TENANT LLC**  
Employer

**APPEAL 20A-UI-02346-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/23/20**  
**Claimant: Appellant (1R)**

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

**STATEMENT OF THE CASE:**

Thomas Jarvis (claimant) appealed a representative's March 11, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits after a separation from work with HJD Sub Tenant (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 28, 2020. The claimant participated personally. The employer participated by Dwight Hopfauf, Hotel General Manager; Lisa Conner, Assistant Restaurant Manager; and Fiona Tucker, Restaurant Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

**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 claimant was hired on November 19, 2017, as a full-time host and busser. Prior to his start date, he signed for receipt of the employer's handbook on November 9, 2017. The handbook had a policy that said failure to follow the employer's directives or providing false or misleading information to the employer could result in termination.

On June 7, July 24, 2018, February 18, November 13, 2019, and February 6, 2020, the employer issued the claimant verbal and written warnings for tardiness. On January 13, 2020, the employer issued the claimant a written warning for failure to follow instructions with regarding to running personal errands on company time. The employer notified the claimant each time that further infractions could result in the claimant's separation from employment.

On February 25, 2020, at 12:30 p.m., the claimant told the assistant restaurant manager he was going to the restroom. She found him outside on a smoking break. Smoking breaks were not scheduled until 1:00 p.m. The assistant restaurant manager discovered the claimant also took a

smoking break at an unauthorized time on February 24, 2020. On February 26, 2020, the employer terminated the claimant for giving his supervisor false information and repeatedly failing to follow instructions.

### **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).

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. Previously, he ran an errand on company time and was tardy for work. He was warned he could be terminated for failure to follow instructions in the future. On February 25, 2020, the claimant did not follow instructions again. In addition, he was untruthful about his actions. The

claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

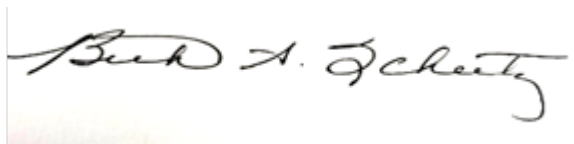
The issue of the overpayment is remanded for determination.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The representative's March 11, 2020, 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.

The issue of the overpayment is remanded for determination.



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Beth A. Scheetz  
Administrative Law Judge

April 30, 2020  
Decision Dated and Mailed

bas/scn