

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICK J HARBAUGH**  
Claimant

**APPEAL NO. 12A-UI-14639-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 11/04/12**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 3, 2012 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on January 16, 2013. Claimant participated. Employer participated through County Engineer Bret Wilkinson.

**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: Claimant was employed full time as an engineering technician from 2008 and was separated from employment on November 2, 2012. (Claimant's Exhibit A, p. 11 - 14) Wilkinson warned claimant verbally on May 31, 2012 about work performance. (Claimant's Exhibit A, pgs. 6, 10, 21 - 24 ) He was to prioritize his work and use time efficiently while handling driveway permits and maintain responsibility for his work schedule and time management. He had not used overtime hours efficiently on the Petersburg Road Bridge project and worked overtime even on days the contractor was not working. He was reminded not to spend more than one or two days per week on entrance permits. He was told again that the work closing out Petersburg Road Bridge and Olde Davenport Road Bridge projects had top priority according to a March 21, 2012 e-mail (Claimant's Exhibit A, p. 25) and was reminded that on May 21, 2012 Wilkinson told him both projects should be audited by the DOT as soon as possible. His multiple survey trips to the Sleepy Hollow Road project area was questioned and was instructed to ask questions if necessary. He was instructed to improve efficiency and productivity and to plan his work week accordingly. Wilkinson offered his assistance if requested.

He was warned in writing on July 10, 2012 about work performance. (Claimant's Exhibit A, pgs. 19, 20) Wilkinson instructed him to prioritize his work and use his time efficiently rather than going out on driveway permits more than once per week. He was told to organize and complete the Olde Davenport Road and Petersburg Road project books so that a DOT audit could be scheduled. He was also instructed to design a culvert for Sleepy Hollow Road.

On September 20, 2012 Wilkinson placed claimant on a three-day disciplinary suspension without pay because of a lack of work performance. (Claimant's Exhibit A, pgs. 15 - 18) First, he was instructed to make corrections on the Petersburg Road Bridge project piling driven forms report and draft a letter to the DOT for Wilkinson's review by September 27, 2012. Second, Wilkinson instructed him to complete the closeout of the Olde Davenport Road Bridge project, including having the changes approved by the Iowa DOT and have final payment sent to the contractor. Third, he was told to have the culvert plans on Sleepy Hollow Road 80 percent complete at Check Plan Stage. Fourth, he was instructed to have the Petersburg Road Bridge project audit completed by the DOT. He was given a deadline of November 1, 2012 to perform these tasks and his regular duties because the last three assignments were continued from the original task assignment on July 10, 2012.

On November 2, 2012 claimant was discharged because he had failed to complete the four tasks assigned on September 20, 2012, three of which were originally assigned on July 10, 2012. (Claimant's Exhibit A, pgs. 11 - 14) First, he had not completed the review and correction of the Petersburg Road Bridge project and did not write the letter to the DOT explaining the errors originally submitted. He had been told which numbers needed to be corrected and why. After two corrections by Wilkinson and another engineer, claimant did not use the spreadsheet provided and the DOT returned the project folder again. The changes were not corrected until November 2, 2012. Secondly, claimant failed to complete the Old Davenport Road Bridge project book, have the changes approved by the DOT and have final payment sent to the contractor. This was assigned as a priority project on March 21, 2012 with reminders about its importance on May 31, July 10, and September 20, 2012. Third, he failed to take the Sleepy Hollow Road project from start to finish as he had demonstrated he could while at Delaware County. He had failed to ask questions as instructed in order to complete the tasks associated with this project. Fourth, he failed the test of his time management and work prioritization skills on the Petersburg Road Bridge project given that the contractor and other Road Department workers complained that he spends excessive amounts of time in the County pick up and the New Vienna County shop.

#### **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 section 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.

871 IAC 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.

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

Although the claimant made some progress on these projects originally assigned as early as March 21, 2012, he failed to perform multiple basic duties towards the completion for up to six months after multiple reminders and warnings to manage his time more effectively and make specific corrections that Wilkinson provided. The continual lack of task completion lends credence to Wilkinson's concerns that claimant was claiming overtime on a project on days when the contractor was not working and contractor and Road Department workers' complaints that claimant spent time in the truck and shop rather than performing his job duties. Given that claimant had historically been able to complete similar projects, claimed competence in the areas and failed to ask questions, his repeated failure to accurately and timely perform his job duties after multiple extensions and warnings is evidence of negligence and carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

**DECISION:**

The December 3, 2012 (reference 01) 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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