

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MARTY E HIPSHUR**  
Claimant

**TSI ENTERPRISES INC**  
Employer

**APPEAL 21A-UI-20979-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/22/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Marty E Hipshur, the claimant/appellant, filed an appeal from the September 17, 2021, (reference 01) unemployment insurance decision that denied benefits based on an August 23, 2021 discharge from work for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on November 10, 2021. Mr. Hipshur participated and testified. The employer participated through Sarah Fiedler, risk manager. Employer's Exhibit 1 was admitted as evidence.

**ISSUE:**

Was Mr. Hipshur discharged for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Hipshur began working for the employer on March 17, 2020. He worked as a full-time operator general laborer. His employment ended on August 23, 2021.

On August 12, 2021, Mr. Hipshur was working with two other employees. One of the employee's job title was lead worker due to how long he had worked for the employer. The lead employee was not Mr. Hipshur's manager or supervisor. The employer learned feed was dumped over a vent costing the employer money to fix the damage done by the feed being dumped over the vent. The employer conducted an investigation.

The employer took statements from Mr. Hipshur and the two other employees who were working on the task. The two other employees stated that Mr. Hipshur and one of the employees were dumping feed over the vent and the lead told them to not dump the feed there but to dump it in another spot. The employees removed the feed from the vent and placed it in the other spot. The two other employees left for lunch. Mr. Hipshur continued to work. When the two other employees returned from lunch, they saw feed dumped over the vent again. As part of the investigation, Mr. Hipshur told the employer that he had dumped the feed in the same

spot as before. In the hearing, Mr. Hipshur testified that no one had told him that he should not dump feed over the vent, and that he did not see the vent.

The employer had previously given Mr. Hipshur a verbal warning in late July 2021 for damaging a coil that cost money for the employer to fix, and written warnings on July 21, 2021 for attendance issues, June 10, 2021 for bringing children onto the worksite, and April 27, 201 for dumping feed in the wrong spot costing the employer money to fix. The employer also suspended Mr. Hipshur for two day for the April 27, 2021 incident. The July 21 warning warned Mr. Hipshur that future disciplinary issues could result in termination of his employment.

On August 23, the employer called Mr. Hipshur and told him that his employment was terminated. The employer did not give him a reason for terminating his employment. Ms. Fiedler testified that the employer terminated Mr. Hipshur's employment because of repeated, costly errors, and because of his multiple write ups.

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

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

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used his own common sense and experience.

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.

In this case, the employer has failed to establish disqualifying, job-related misconduct. Ultimately, the employer terminated Mr. Hipshur's employment because he continued to make mistakes that were costing the employer money. It is understandable that the employer did not want to continue to pay for Mr. Hipshur's mistakes. However, the employer's ability to terminate Mr. Hipshur's employment does not necessarily mean that the termination was for disqualifying, job-related misconduct. Here, the evidence does not establish misconduct. As such, benefits are allowed.

**DECISION:**

The September 17, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Hipshur 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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December 15, 2021  
Decision Dated and Mailed

dz/mh