

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL G TALKINGTON
Claimant

APPEAL 15A-UCFE-00034-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

US POSTAL SERVICE
Employer

**OC: 10/11/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 12, 2015 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 7, 2015. Claimant participated. Employer participated through (representative) Rick Smith, Labor Relations Specialist, and Kristi Hargens, Officer in Charge. Claimant's Exhibit A was entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected 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 unassigned regular worker/maintenance mechanic beginning on September 30, 2006 through October 13, 2015; when he was discharged.

The claimant and several of his coworkers had no work available for them in Sioux City. They were spending most of their days sitting in the break room doing nothing. They were all paid at a Level 9. The janitor in the Carroll post office retired or left, and the claimant and two of his coworkers were assigned to drive a government car to the Carroll post office and to take instructions from the office in charge (OIC) as to what needed to be done. The claimant was primarily the driver of the car. He was scheduled to work 7:00 a.m. to 3:30 p.m. The claimant opted to skip lunch and would be done working at 3:00 p.m. This assignment for the claimant and his coworkers began in January 2015. Although janitorial work is normally paid at a Level 4, the claimant and his coworkers were paid at a Level 9.

As time progressed the claimant was taking longer and longer to drive to and from Sioux City to Carroll and he and his coworkers were accomplishing less and less. The employer investigated and discovered that the claimant was taking circuitous routes, and was taking longer and more breaks. The claimant admits that on at least one occasion he left the Carroll post office and took himself and his coworkers to a local car dealership to eat free hot dogs. Credible employer records show that on one occasion the claimant and his coworkers stopped for 45 minutes for a

break beside a cornfield. The claimant and his coworkers were not cleaning the bathrooms at the Carroll post office. The three of them would take a trip that would normally take two hours (approximate 104 miles) and stretch it into a three-hour, one-way trip. The three of them would work for approximately one-half hour and then take three hours to drive back to Sioux City. The OIC at Carroll complained that they were not completing their duties. The claimant and his coworkers were eventually removed from the job for loafing on the job.

From May 21, claimant was off work with full pay while the employer investigated. The claimant was paid full wages from May 21 through October 13, 2015.

Employer's Exhibit One details the investigation. The employer tracked 25 days the claimant worked and drove from Sioux City to Carroll and back. The time period traced between April 3, 2015 and May 8, 2015. During that period the shortest time the claimant drove from Sioux City to Carroll was two hours and 40 minutes. The claimant was given specific routes to follow but chose not to do so. He did so to waste time. The claimant indicated he was very safety conscious and drove under the speed limit but he seemed to have no safety issue with eating while he was driving. On at least one occasion the claimant drove out of his way to take a coworker to Sloan so he could pick up his mail.

The claimant was interviewed on July 9 for approximately two hours and did not need to take a break to use the bathroom or stretch during the two-hour period. The claimant indicated that he and his coworkers would stop at parks to take breaks. The employer's investigation showed they would first stop at a convenience store then at a park. The claimant was not punching out for lunch break.

The claimant currently had a grievance pending over his disciplinary removal from work.

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 § 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 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. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

The claimant knew from May 21 that he was under investigation and he was paid full wages until October 13.

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.

The claimant was not a credible witness. He was evasive when answering questions and had to be forced to answer the question he was actually asked. The employer's report overwhelming shows the claimant was intentionally taking the most circuitous routes and extended breaks in order to avoid working. The claimant is simply not believable that a person assigned to perform basic janitorial work would not be expected to clean the bathrooms. Prior to being assigned the work in Carroll, the claimant was literally sitting in the break room doing nothing for his work shift. His allegation that he was driving slowly to be safe is simply not believable when he admitted he was eating while driving. The claimant as the driver of the car had the responsibility to work in a timely manner. His repeated loafing, wasting time and excessive breaks show a disregard for the employer's best interests that is sufficient to disqualify him from receipt of unemployment insurance benefits.

DECISION:

The November 12, 2015 (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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/can