

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DENNIS D DEES**  
Claimant

**AVENTURE STAFFING & PROFESSIONAL**  
Employer

**APPEAL 21A-UI-01016-S1-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.5-1-j – Separation from Temporary Employer

**STATEMENT OF THE CASE:**

Dennis Dees (claimant) appealed a representative's November 24, 2020, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from work with Aventure Staffing & Professional (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2021. The claimant participated personally. The employer participated by Toni Holguin, Human Resources, and Carrie Ducoff, Branch, Manager of the Health Care Division.

The claimant offered and Exhibit A was received into evidence. 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 employer is a temporary employment service. The claimant performed services off and on from April 2014, through September 15, 2020, to the medical side of the employer's agency. He signed a document on January 23, 2018, indicating he was to contact the employer within three business days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The employer gave the claimant a copy of the document, which was separate from the contract for hire.

Between February 14, 2019, and September 10, 2020, five care facilities asked the claimant never to return to work with their business based on his inappropriate behavior. Assigned facilities described the claimant's behavior as lazy, disrespectful, laughing at residents, poking

residents in the back, improperly moving residents, and telling Alzheimer's patient's they should respect him.

On September 10, 2020, the employer issued the claimant a final warning. It explained that if the claimant was asked not to return to a sixth facility, he would be terminated. The claimant understood.

The claimant was assigned to work at Kingsley Specialty Care. He appeared for work on September 11, 2020. On September 17, 19, and 20, 2020, the claimant notified the employer he was unable to work because he was having issues with his leg prosthesis. He was unable to work. The employer was understanding of those issues.

On September 21, 2020, the claimant sent a text at 12:05 p.m. to Kingsley saying he could not make his shift, rather than calling to report the absence. Kingsley did not see the text until less than an hour before the start of the claimant's shift. Kingsley asked the claimant not to return to the facility because of the improper reporting. On September 21, 2020, the employer terminated the claimant.

The claimant filed for unemployment insurance benefits with an effective date of September 20, 2020. His weekly benefit amount was determined to be \$397.00. The claimant received no state unemployment insurance benefits or Federal Pandemic Unemployment Compensation after September 20, 2020.

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

For the reasons that follow the administrative law judge concludes the claimant was separated from employment for a disqualifying reason.

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).


The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. He disregarded the employer's instructions by acting inappropriately and failing to properly report his final absence. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

Even though the claimant is not eligible for regular unemployment insurance benefits under state law, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act"), Public Law 116-136. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if he or she is eligible for such compensation for the week claimed. The claimant must apply for PUA, as noted in the instructions provided in the "Note to Claimant" below.

#### **DECISION:**

The representative's November 24, 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.

*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>.



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Beth A. Scheetz  
Administrative Law Judge

February 24, 2021  
Decision Dated and Mailed

bas/scn