

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KEVIN R EID**  
Claimant

**CNH AMERICA LLC**  
Employer

**APPEAL 15A-UI-06818-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/04/15**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 9, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 15, 2015. Claimant participated. Employer participated through labor relation specialist Jill Dunlop. Mike Edwards was claimant's representative and testified for the claimant. Employer exhibits number one through eleven were admitted into evidence without objection.

**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 a welder from April 2, 2012, and was separated from employment on May 20, 2015, when he was discharged.

The employer has a progressive discipline policy: written warning, suspension, and then termination. Any suspension is reviewed by human resources to determine if the suspension will be upheld. During the new hire orientation, employees are given a copy of the policy and the standards of conduct. The policy and standards of conduct also explains that the employer and its facilities are non-smoking, unless in the designated areas. Employer Exhibits 1 and 2. Claimant understood these policies and standards of conduct. Claimant received the policies and standards of conduct.

On April 22, 2015, claimant was given a verbal coaching for reading a book in his work area during production time by a supervisor. Claimant testified the employer was aware he had been reading books at his work area since June 14, 2014.

On May 19, 2015, the employer gave claimant a written warning for reading a book and eating a sandwich during production time. Employer Exhibit 10. Later that same day (May 19, 2015), the employer caught claimant smoking and using his cell phone during production time (non-break time). Employer Exhibit 11. The employer notified claimant he was going to be suspended for

three days. Claimant was warned a further violation may lead to termination. Employer Exhibit 11. Claimant was in a designated smoking area. Claimant testified he had smoked with his supervisors on prior occasions during non-break times.

On May 20, 2015, claimant had a meeting with Ms. Dunlop and others regarding his three-day suspension. Ms. Dunlop informed claimant that his three-day suspension was being upheld. Claimant left the human resources office and went outside into the parking lot. Once in the parking lot, claimant proceeded to start smoking a cigarette in the parking lot area. Claimant knew the parking lot was not a designated smoking area, and therefore, it was a non-smoking area. This was a violation of the standards of conduct. Multiple employees observed claimant smoking in the parking lot. Employer Exhibits 4, 6, and 7. While claimant was being escorted back to the human resources office, he was observed reading a book in the production area and tripped over a cart causing him to fall to the ground. Employer Exhibits 3 and 7. Claimant knew this was a safety violation. Claimant was then terminated for smoking in a non-smoking area and disregarding safety. Employer Exhibit 8.

### **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. Benefits are denied.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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).

It is the duty of an administrative law judge and 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). 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*, 548 N.W.2d 162, 163 (Iowa App. 1996).

Claimant’s repeated failure to follow work place rules after having been warned is evidence of misconduct to such a degree as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Claimant’s argument that he had previously been allowed to read books during production time is not persuasive. On April 22, 2015, claimant was given explicit notice that he could not read books during production time. This notice was given to claimant by a supervisor. Claimant voluntarily chose to read a book during production time on May 19, 2015. Furthermore, claimant was eating a sandwich. The employer issued claimant a written warning for this incident. Then later that same day, claimant, again during production time, was smoking and on his phone. This was another violation of the employer’s work rules. The employer notified claimant at this time he was being suspended for three days. The next day, claimant met with Ms. Dunlop in the human resources office to discuss his three-day suspension. Ms. Dunlop upheld claimant’s three day suspension. This suspension put claimant on notice his job was in jeopardy. As soon as claimant left this meeting, he willfully violated the standards of conduct by smoking in a non-smoking area. Claimant was further observed walking through the production area reading a book. This is a safety hazard, which claimant illustrated by tripping over a cart and falling to the ground while he was reading the book.

The employer has presented substantial and credible evidence that claimant disregarded the employer’s policies and standards of conduct after having been warned. This is disqualifying misconduct. Benefits are denied.

**DECISION:**

The June 9, 2015, (reference 01) unemployment insurance 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs