

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSH WAYSON**  
Claimant

**THOMAS L CARDELLA & ASSOCIATES INC**  
Employer

**APPEAL 19A-UI-08276-AW-T  
ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/08/19  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the October 14, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 12, 2019, at 11:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed as a full-time hiring manager from October 7, 2016 until his employment with Thomas L Cardella & Associates, Inc. ended on August 13, 2019.

Employer has a drug policy outlined in its employee handbook. The policy prohibits possession of any illegal drugs on company property. Violation of the policy is subject to corrective action up to and including termination. Claimant received a copy of the handbook.

On September 13, 2019, employer terminated claimant's employment due to an allegation that claimant sold illegal drugs on company property in violation of employer's drug policy. Employer did not state the date of the incident that violated the policy or when the incident came to employer's attention. Employer only told claimant that a coworker reported that claimant got into a car, handed something to someone in the car and then got out of the car. Employer provided claimant with no other information regarding the allegation.

Claimant has not possessed illegal drugs on company property. Claimant has not violated employer's drug policy in any way. Claimant has no prior warnings for violating the drug policy. Employer did not notify law enforcement regarding the incident. Claimant did not believe that his job was in jeopardy.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for no disqualifying reason. Benefits are allowed.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) and (8) provide:

(4) *Report required*. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Employer discharged claimant because a coworker alleged claimant was selling drugs when he was seen getting into a vehicle, handing something to someone in the vehicle and then exiting the vehicle. Claimant was not observed with illegal drugs on company property. Employer's decision to terminate claimant's employment was based upon an allegation or suspicion of selling drugs with no additional evidence; a reasonably prudent person would not rely upon allegations and suspicions when conducting serious affairs. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The October 14, 2019 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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