

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRANDON M FEICKERT**  
Claimant

**DAN LYNCH CONSTRUCTION INC**  
Employer

**APPEAL NO. 20R-UI-03014-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20  
Claimant: Appellant (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Federal Law PL 116-136 Sec. 2104 – Recovery of Overpayment of Federal Benefit

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 9, 2020, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on May 6, 2020. Claimant participated. Employer participated by Dan Lynch. Parties waived notice and time for the issue of overpayment of federal benefits.

**ISSUES:**

Whether claimant was discharged for misconduct?

Whether claimant was overpaid state or federal benefits?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 14, 2020.

Employer discharged claimant on January 22, 2020 because claimant missed a number of days' work for back problems and other problems and only notified a person he believed to be a foreman and not the owner of his absences.

Claimant worked as a laborer for employer. Claimant stated that he injured his back at work on or around January 14, 2020. Claimant stated that for the next week, he contacted employer through the coworker who picked him up for work to say that he wouldn't be in to work. Claimant and the coworker would text one another each day before work. During those texts, claimant would ask if they were working inside or outside. When claimant was informed that they would be working outside, claimant would not go into work. This happened over an entire week.

Claimant stated that he had back problems, and going outside would exacerbate those problems. He said he didn't go to the doctor as he didn't want employer to have doctor's bills.

Claimant provided no proof of his medical issues, and his texts showed that he was willing to go into work if the work was held inside. Claimant provided no doctor's excuse to prevent him from working outside.

Employer stated that the person who claimant texted was simply a coworker who picked up claimant and not a foreman or manager. Claimant did not text the owner until he'd been off work for over a week. When he texted employer on January 21, 2020 employer told claimant he'd been terminated for lack of contact. Claimant admitted that before the new coworker started giving him a ride, he'd text employer when he'd miss work.

Claimant has received state benefits in this matter in the amount of \$1,928.00. Claimant has received federal benefits in this matter of \$2,400.00

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

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code

§ 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. Here, employer stated that he'd repeatedly verbally warned claimant about his excessive absenteeism, but provided no documentation.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning absenteeism.

The last incident, which brought about the discharge, constitutes misconduct because claimant limited his willingness to work to whether or not employer was working inside. Claimant did not provide any medical support for this claim. Claimant chose to miss all of the cold outside work, but was willing to return when things were warmer. None of claimant's texts to the coworker/foreman indicated any back problems, rather they focused on inside versus outside work. As such, claimant did not provide illness or a medical reason he could not come to work for more than three days. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

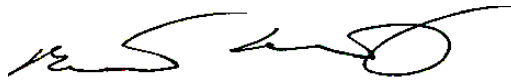
*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations 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>.

Claimant has been overpaid state benefits in this matter in the amount of \$1,928.00. Claimant has been overpaid federal benefits in this matter of \$2,400.00.

**DECISION:**

The decision of the representative dated March 9, 2020, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. Claimant has been overpaid state benefits in this matter in the amount of \$1,928.00. Claimant has been overpaid federal benefits in this matter of \$2,400.00.



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Blair A. Bennett  
Administrative Law Judge

May 7, 2020  
Decision Dated and Mailed

bab/scn