

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOHN G OBRINK**  
Claimant

**BUFFALO WEAVER INC**  
Employer

**APPEAL 15A-UI-10329-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/15  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 2, 2015, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 29, 2015. Claimant did not participate. Employer participated through Becky Snyder, Human Resources Manager.

**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 a production worker and assembler beginning on July 15, 2014 through July 20, 2015, when he was discharged. At the hearing the employer admitted that during the fact-finding interview the claimant indicated he was performing to the best of his ability. Ms. Snyder indicated that claimant never met the employer's expectations during his course of employment. The employer attributed that to the claimant not trying hard enough and was making too many mistakes. Ms. Snyder was not present when the claimant worked and could not present any firsthand knowledge about what occurred. The final mistake happened the week before the claimant was discharged and there is no evidence that the claimant intentionally tried to make the mistake.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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).

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). Since employer agreed that claimant had never had a sustained period of time during which he performed his job duties to employer's satisfaction and inasmuch as he did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 2, 2015, (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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