

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUSTIN HAPPEL**  
Claimant

**ATTACHMENT TECHNOLOGIES INC**  
Employer

**APPEAL 21A-UI-20111-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/11/21**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Justin Happel, filed an appeal from the September 1, 2021, (reference 01) unemployment insurance decision that denied benefits based upon discharge for a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 1, 2021. The claimant participated. The employer participated through Senior Human Resources Generalist Eric Dirks. The employer's proposed exhibit was not admitted because the claimant had not received it prior to the start of the hearing.

**ISSUE:**

Whether the claimant's separation from employment is disqualifying?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as a CNC machine operator from August 8, 2016, until this employment ended on July 9, 2021, when he was discharged. The claimant's immediate supervisor prior to his separation was Group Leader Jon Reth.

The employer has a safety policy that is contained within its employee handbook. The safety policy states that if an employee must follow all work instructions. It further states that if an employee does not know the procedure, then the employee needs to ask the supervisor before beginning any work. If an employee fails to do so, then they could be subject to disciplinary action up to and including termination. Management staff permitted employees to use company equipment, but maintained employees needed to request permission before using company equipment. Employees can review the employee manual on the employer's Intranet.

On July 8, 2021, the claimant pulled his car into the employer's docking bay. He had a hole in his exhaust assembly that he believed could result in him being pulled over by the police. At first, the claimant attempted to weld the hole by crawling underneath the vehicle, but he could not see the area with a small flashlight. At that point, the claimant decided to use a forklift to lift

his vehicle just enough so he could complete the task during his lunch break. The claimant welded the exhaust assembly without issue during his lunch break. There were no other employees in the room to supervise his welding. Welding gases are stored 30 feet away behind another door.

On July 9, 2021, Plant Manager Shawn Brit and Corporate Legal Counsel Russel Sweeting determined that the claimant should be terminated. The claimant was terminated exclusively for the actions that he took on July 8, 2021.

The claimant had not been warned regarding similar misconduct in the past. The claimant had welded items in the past such as a detached exhaust assembly from his other vehicle. However, the claimant had informed his supervisor of these plans, prior to using the equipment. Other employees had used the docking bay to warm up their cars during the winter, but they had not done anything similar to what the claimant did on July 8, 2021.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for work-related misconduct.

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 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.

871 IAC 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.

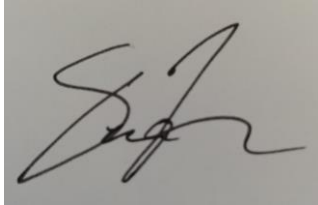
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Ordinarily a claimant must be warned before being disqualified for misconduct. In this case, the administrative law judge finds the claimant's conduct to be so beyond what an employer could expect from its employees that no warning is necessary. The claimant used a forklift to raise his personal vehicle and welded his exhaust assembly without telling anyone in management. The claimant attempts to excuse this by providing examples that are in no way comparable in which he welded items. There is nothing in the record to suggest he performed these other actions without his supervisor knowing as he did with this incident. These other incidents are not similar because in this instance the claimant was underneath his vehicle which was suspended by a forklift. This is an unorthodox method for raising a vehicle and if it had slipped he would have been crushed to death. He was also attempting to weld a vehicle's exhaust assembly while it was still on the car. It is reasonable for an employer to expect that an employee will check with a supervisor before engaging in something so dangerous. Benefits are denied.

**DECISION:**

The September 1, 2021, (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.

A handwritten signature in black ink on a light gray background. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge  
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Fax (515) 725-9067

December 6, 2021  
Decision Dated and Mailed

smn/mh