

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**STEVEN E DUVALL**  
Claimant

**APPEAL NO. 14A-UI-03728-G**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF AMES**  
Employer

**OC: 03/16/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Duvall (claimant) appealed a representative's April 2, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with City of Ames (employer). After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for August 15, 2014, in Des Moines, Iowa. The claimant was represented by Andrew LeGrant, Attorney at Law, and participated personally. The employer was represented by Judy Parks and Mark Lambert, Attorneys at Law, and participated by Julie Huisman, Human Resources Director, and John Dunn, Water and Pollution Director. Employer's Exhibits One through Twenty Four, and claimant's Exhibits A through H were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 31, 2009 as a full-time Assistant Director of Water and Pollution Control. Claimant last worked for employer on March 7, 2014.

Employer discharged claimant on March 7, 2014 for insubordination. On February 20, 2014 claimant was issued a written reprimand for insubordination because claimant had intentionally undermined his supervisor John Dunn during an important city planning meeting. Claimant knew that Mr. Dunn, the Director of the Ames Water and Pollution Control, wanted to pursue options to find an exemption to a Critical Operations Power Systems requirement, commonly referred to as COPS, for their upcoming water treatment plant project. The city would save as much as \$800,000.00 if they were able to obtain that exemption. Mr. Dunn was not able to attend the first meeting which took place in January of 2013. Claimant, as the Assistant Director of the department led the meeting. During that meeting claimant undermined Mr. Dunn's position on the COPS issue and discussed how he believed that the facility should be covered under COPS, and that an exemption should not be sought. Claimant engaged in similar conduct again after being warned on February 15, 2014 knowing that his supervisor Mr. Dunn had directed claimant to work to gain the exemption on behalf of his department.

After receiving the written reprimand in February claimant continued to advocate against Mr. Dunn's position on the COPS issue. Mr. Dunn tried to work with claimant and provide additional training and support. Claimant considered those attempts to be threatening and not helpful. Claimant was given a final notice that his employment was going to be terminated if there was not significant improvement in his behavior and attitude on December 3, 2013. In that reprimand it informs claimant that if he cannot change his behavior and work with Mr. Dunn then his employment would be terminated in three months.

Claimant took that reprimand as an insult and reacted by contacting other supervisors and past supervisors that worked for the City of Ames to discuss the problems he was having with Mr. Dunn. Claimant told those individuals that Mr. Dunn as not doing his job, and that his actions were not legal. He also told other employees that the exemption Mr. Dunn was seeking was not ethical, and that the city should not follow Mr. Dunn's advice on that issue. Claimant told Minnie Gleason that he would take Mr. Dunn's engineering license because of the inappropriate actions Mr. Dunn had taken.

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

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(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 for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). 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). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

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

The last incident, which brought about the discharge, constitutes misconduct because claimant was given multiple warnings, but instead of trying to make amends and do better claimant would continue to make derogatory and offensive comments about his supervisor. Claimant's acts were intentional in nature and evince a willful and wanton disregard of the employer's interest. Claimant's actions were deliberate and calculated and show a disregard of standards of behavior which the employer has the right to expect from its employees.

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.

**DECISION:**

The decision of the representative dated April 2, 2014, reference 01, 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.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

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