

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID VAN GORP**  
Claimant

**APPEAL NO: 16A-UI-07931-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AUTOZONERS LLC**  
Employer

**OC: 06/19/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 12, 2016, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 9, 2016. The claimant participated in the hearing. Boris Dragojevic, District Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Four were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time store manager for Autozoners from September 17, 2010 to June 20, 2016. He was discharged for not meeting the employer's performance expectations.

On January 6, 2016, the claimant received a first written warning for failing to complete a "fix-it" list and failing to follow instructions on the inventory preparation. On February 23, 2016, he received a second written warning for job performance after his store failed a quarterly audit. On April 4, 2016, the employer placed the claimant on a 60-day performance improvement plan (PIP). The plan noted the claimant's store's "planogram completion integrity has been a concern;" the store has "failed to achieve a passing score of 85 percent on LP audits;" "the fix-it lists have not been completed by the expected completion dates;" "inventory management completion has not been at the 100 percent completion expectation weekly;" and "customer service complaints have been an ongoing area of concern" for the store (Employer's Exhibit Three). The plan listed the actions the claimant was to take to address the performance issues cited by the employer. The claimant was then graded on his performance every two weeks. The employer extended the 60-day time frame two weeks, once when the claimant was on

vacation and another when he was training a new assistant manager. The employer held follow-up meetings with the claimant April 19, May 5, May 27, and June 19, 2016 (Employer's Exhibit Four). The follow-up meeting notes showed the claimant was still struggling to complete his required duties (Employer's Exhibit Four).

The claimant had been a store manager since being hired in 2010. He was transferred to his last store in January 2015. The final store the claimant managed was extremely busy and, like several other stores, was experiencing high employee turnover. Consequently, the claimant was unable to delegate many of the duties of the store to subordinates so he could focus on administrative matters and he fell behind. Although the claimant was performing his job to the best of his ability, and the employer felt he was trying to meet its expectations, he was overwhelmed due to the volume of business at that store and could not keep up. At the end of the PIP the employer notified the claimant it was terminating his employment June 20, 2016.

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

For the reasons that follow, the administrative law judge concludes the 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).

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The employer recognized the claimant was trying to perform his duties to the best of his ability but he was unable to meet the employer's expectations after being moved to the last store he managed. That store was busier than the claimant's previous stores and the turnover rate was high. Because the claimant was short-staffed he was forced to perform many routine duties that would usually have been done by other employees which in turn would allow the claimant to concentrate on his administrative duties. Instead, the claimant fell behind on those duties and could never catch up.

Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. EAB, 423 N.W.2d 211 (Iowa App. 1988). In this case although the claimant was not meeting the employer's performance expectations, there is no evidence that the claimant's actions were intentional job misconduct. Instead, the claimant had difficulty adjusting to a new, high volume store with high employee turnover, but performed his job to the best of his ability. Under these circumstances, the administrative law judge concludes the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The July 12, 2016, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs