

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JAMIE L DELANEY**  
Claimant

**APPEAL NO. 18A-UI-06388-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE AMERICAN BOTTLING COMPANY**  
Employer

**OC: 05/20/18**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jamie Delaney (claimant) appealed a representative's June 8, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with The American Bottling Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 27, 2018. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**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 August 26, 2013, as a full-time driver merchandiser. The claimant signed for receipt of the employer's handbook when he was hired. The claimant understood he would be terminated if he received three counselings.

Shortly after he was hired the employer issued him a written warning for attendance. In the winter of 2017/2018, the employer issued him a written warning for damaging the garage door at the warehouse. The claimant hit it with a truck because he did not notice it had not opened completely before trying to exit. The employer notified the claimant each time that further infractions could result in his termination from employment.

During the week ending May 11, 2018, law enforcement issued the claimant a citation for not wearing his safety belt while driving the employer's truck between customers. The employer issued the claimant his third counseling and termination on May 17, 2018.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's second issue caused the employer property damage. The third incident was a safety issue. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

**DECISION:**

The representative's June 8, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs