

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MERT S MARTIN
Claimant

FAMILY RESOURCES INC
Employer

APPEAL 21A-UI-08369-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/14/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On March 22, 2021, the claimant, Mert S. Martin, filed an appeal from the March 17, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Monday, June 7, 2021. The claimant, Mert S. Martin, participated. The employer, Family Resources, Inc., participated through Mindy Lawlor, HR Manager. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Was the claimant discharged from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a maintenance and custodial employee, from November 25, 2019 until February 18, 2021, when he was discharged for insubordination.

Claimant was informed by his supervisor, Anthony, that he needed to attend a mandatory meeting with him and COO Ashley on February 1, 2021. Claimant did not show up to this meeting. He explained that, due to COVID-19, he felt it would put his health at risk to attend a meeting in the maintenance office. Claimant asked to have the meeting moved to Building B. The employer offered to have the meeting via telephone, but this option was unacceptable to claimant.

Following February 1, Anthony contacted claimant and informed him that he needed to attend a mandatory meeting with him and COO Ashley on February 15, 2021. Claimant was informed that failing to attend would be considered insubordination and could lead to the end of his employment. The employer intended to issue claimant a final written warning at this meeting for insubordinate behavior in refusing to attend the February 1 meeting. Claimant again did not show up to this meeting.

Claimant had been warned for insubordinate behavior in the past. On December 16, 2020, claimant was issued a written warning after an incident involving the floors. Claimant removed stickers from the floors that he was specifically instructed not to remove. Additionally, he informed the employer that he intended to continue removing the stickers in the future. Claimant also used inappropriate profane language in the workplace near the employer's troubled youth clientele, and he continued to do this after being asked to stop.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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). 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).

In insubordination cases, the reasonableness of the employer’s demand in light of the circumstances must be evaluated, along with the worker’s reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker’s subjective point of view but “what a reasonable person would have believed under the circumstances.” *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); *accord O’Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant’s actions in refusing to do as told “show[ed] an intentional and substantial disregard of the employer’s interests or of the employee’s duties and obligations to the employer.” 871 IAC 24.32(1)(a).

Here, the final incident involved claimant behaving insubordinately in refusing to attend a mandatory meeting. Claimant was aware that he could lose his job for failing to attend this meeting. While the employer may not have granted claimant the accommodation he desired by moving the meeting to another building, they offered to hold the meeting via telephone which certainly would have kept claimant safe from COVID-19 exposure. Claimant had no good reason for refusing this accommodation and failing to attend the meeting. The employer behaved reasonably in requesting claimant’s presence at a meeting, and claimant acted unreasonably in refusing to comply with this directive. The employer has established that claimant engaged in substantial, job-related misconduct. Benefits are withheld.

DECISION:

The March 17, 2021 (reference 01) unemployment insurance decision is affirmed. 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.



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June 21, 2021
Decision Dated and Mailed

lj/scn