

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA A BRAUNSCHWEIG
Claimant

**BUENA VISTA REGIONAL MEDICAL
CENTER**
Employer

APPEAL 22A-UI-05294-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/30/22
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant/appellant, Joshua R. Braunschweig, filed an appeal from the February 17, 2022 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits based upon his January 13, 2022 involuntary separation. After proper notice, a telephone hearing was held on April 8, 2022. The claimant participated personally. The employer/respondent, Buena Vista Regional Medical Center, participated through Carrie Turnquist, executive director of human resources. Steve Spurlock also testified on behalf of the employer. Official notice of the administrative record was taken. Claimant Exhibit A and Employer Exhibits 1-2 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence, the administrative law judge finds: Employer is a health care facility in Storm Lake, Iowa. Claimant performed work for this employer as a full-time Systems Administrator beginning December 16, 2013 until January 13, 2022 when he was discharged.

In response to the COVID-19 pandemic, employer required employees to wear certain personal protective equipment (PPE) at the workplace, and had done so since March 2020. The policies were based in part by recommendations by the Centers for Disease Control and Prevention (CDC) and Iowa Department of Public Health (IDPH). The policies varied based upon the type of work performed, access to patients and risk (See administrative record/fact-finding documents).

Claimant performed work on-site for the employer, and even though he would not be working personally with patients, he would have contact with peers and the public as he accessed hallways, restrooms and other parts of the building.

Claimant was trained on these policies effective April 3, 2020, and again in May 2020 when employer required employees in claimant's position to be masked at work unless in their personal office. This procedure remained in effect at the time of claimant's separation.

Claimant initially requested an exemption to the masking requirement based upon religious beliefs. Employer responded by providing claimant a mask with a clear front panel, and claimant agreed to the accommodation.

On May 5, 2020, employer documented a verbal warning to claimant after he bypassed the employer's screening station, and refused a directive to participate. On September 21, 2020, claimant was issued a documented written warning for refusing to comply with the masking policy and wear his mask, when requested (See administrative records/ fact-finding documents). He was warned that future incidents may result in discharge.

In fall 2021, employer implemented a vaccine requirement for its employees. Claimant requested an exemption and was granted one. In the absence of being vaccinated, employer provided claimant a Max Air shield, which consisted of a helmet with a clear face covering that essentially sealed and filtered air for claimant. Claimant agreed to the accommodation. Claimant was permitted to wear his clear panel mask when going to and from his vehicle to office, and otherwise expected wear the shield.

On January 13, 2022, claimant performed work. As a salaried worker, he was not required to clock in and out for breaks. Around 10:00, claimant left his assigned work area and went to a patient lab to have a COVID-19 test performed so he could have surgery the following day. Claimant was viewed walking down the hallways without his max air shield/helmet or the clear panel mask on. He was directed by an employer representative to put it on. Claimant refused and responded that he was not on the clock. Claimant sat in an open air lobby, waiting to be called for his test. Claimant's manager was called and claimant again refused when confronted by Mr. Spurlock, who viewed the claimant without his clear mask or helmet on, while on employer premises and not inside his office.

At the hearing, claimant offered two conflicting explanations for his refusal to wear either the clear mask or helmet, since he was out of his personal office. The first explanation was that he would not be able to hear his name be called for the test, and that is why he removed the helmet. The second was that he was not performing work and not required to mask up as a patient. He was subsequently discharged.

Claimant opined at the hearing that he was targeted for discipline, based upon having different religious beliefs than Ms. Turnquist. Claimant stated he has secretly recorded Ms. Turnquist making comments to that effect but did not present the recording as evidence for the hearing. Claimant also stated he felt targeted because he knew of other employees, including doctors, who had not been masked but not disciplined. Employer denied targeting claimant, stating it felt the opposite; that employer "bent over backward" to accommodate claimant's requests. Employer denied knowledge of incidents referenced by claimant.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In this case, employer is a health care facility. During the COVID-19 pandemic, it has enacted requirements, including masking, to reduce the risk of exposure to COVID-19 amongst employees and patients. Claimant was aware that if he was in the hallways walking, that he was required to have at least an employer provided clear mask on, or his employer provided max air shield/helmet. Claimant was clear in his opposition to the rules, beginning with a request for exemption, and later in twice refusing to comply with directives. Claimant knew or should have known that his failure to comply with the masking procedure in the future could lead to his discharge.

On January 13, 2022, claimant was asked to put his mask on while walking through the hallways and awaiting a COVID-19 test in the lab waiting area. Claimant refused the directive. Claimant offered two opposing explanations as to why he did not comply: he first stated he removed the helmet because he could not hear his name being called. However, claimant could have still worn his clear panel face mask, when awaiting his test, without any possibility of restricting his hearing. The second reason claimant stated he did not wear it, is because he didn't have to if he was on a break.

Under the definition of misconduct for purposes of unemployment benefit disqualification, the conduct in question must be "work-connected." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The court has concluded that some off-duty conduct can have the requisite element of work connection. *Kleidosty v. Emp't Appeal Bd.*, 482 N.W.2d 416, 418 (Iowa 1992). Under similar definitions of misconduct, for an employer to show that the employee's off-duty activities rise to the level of misconduct in connection with the employment, the employer must show by a preponderance of the evidence that the employee's conduct (1) had some nexus with the work; (2) resulted in some harm to the employer's interest, and (3) was conduct which was (a) violative of some code of behavior impliedly contracted between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer. See also, *Dray v. Director*, 930 S.W.2d 390 (Ark. Ct. App. 1996); *In re Kotrba*, 418 N.W.2d 313 (SD 1988), quoting *Nelson v. Dept of Emp't Security*, 655 P.2d 242 (WA 1982); 76 Am. Jur. 2d, Unemployment Compensation §§ 77-78.

In this case, the final incident occurred on claimant's work premises, and between claimant and employees. Even if claimant was on a paid break while obtaining a COVID-19 test, the administrative law judge is persuaded there is a sufficient nexus between claimant, his conduct and the employer, and that he intentionally behaved in a manner contrary to employer policies. Just because an employee is not actively performing his job duties while on the premises, does not mean employer rules no longer apply.

Cognizant of claimant's opposition to masks and the COVID-19 vaccine, the administrative law judge concludes the employer's request under the circumstances was reasonable. Claimant failed to provide sufficient evidence to mitigate his noncompliance, nor was the administrative law judge persuaded by claimant's allegations of being targeted or subject to disparate treatment. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The February 17, 2022, (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.



Jennifer L. Beckman
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April 20, 2022
Decision Dated and Mailed

jlb/kmj