

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**RON D BENNER**  
Claimant

**STRYTEN MANUFACTURING LLC**  
Employer

**APPEAL 21A-UI-11041-JD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/28/21  
Claimant: Appellant (2)**

---

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

**STATEMENT OF THE CASE:**

On April 21, 2021, the claimant filed an appeal from the April 19, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2021. Claimant Ron Benner, participated personally. Employer participated through Laura Scharosch. The administrative law judge took official notice of the administrative record.

**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 began working for employer on July 29, 2019. Claimant last worked as a full-time Maintenance Manager. Claimant was separated from employment on March 5, 2021, when he was discharged for misconduct. The employer's representative indicated that the claimant "lied" about his interaction with a direct report regarding a potential promotion and raise to his supervisor. The employer acknowledged that performance evaluations were within the claimant's purview as a manager. The claimant indicated that he did have a discussion with a direct report during a performance review regarding future promotions within the company. The claimant testified that he advised the employee that he would support a pay increase and a promotion within the company but that the final determination was not up to him. The employer did not provide any witnesses with first-hand knowledge of the interactions with the claimant and relied solely on controverted hearsay statements as part of their presentation.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:  
**Causes for disqualification.**

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 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

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

(4) *Report required.* The claimant's statement and 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.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see

whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). It is permissible to infer that investigative records were not submitted because they would not have been supportive of employer's position. See, *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

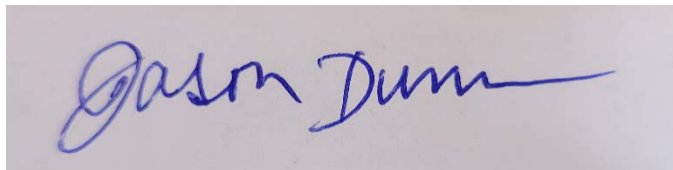
The employer has the burden of proof in this matter. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer's nearly complete reliance on hearsay statements is unsettling. The employer's stated justification that claimant "lied" was not supported by reasons proffered by the employer's witness and only served to undermine the employer's credibility overall.

The employer did not meet its burden in proving job related misconduct. There is no credible evidence that the claimant lied to his supervisor and the employer's reasoning for the discharge were vague, inconsistent, and confusing. Benefits allowed.

**DECISION:**

The April 19, 2021, (reference 01) decision is REVERSED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



---

Jason Dunn  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-352 Decision Dated and Mailed

August 9, 2021  
Decision Dated and Mailed

jd/scn