

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TERRANCE W BUESCHER**  
Claimant

**SIOUXLAND MACHINE INC**  
Employer

**APPEAL 20A-UI-01734-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 20, 2020 (reference 02) unemployment insurance decision that denied benefits to the claimant based upon him voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on March 12, 2020. The claimant, Terrance W. Buescher, participated personally. The employer, Siouxland Machine Inc., participated through witnesses Chari De Ruyter and Cal De Ruyter. Claimant's Exhibits A through C were admitted.

**ISSUE:**

Was the claimant discharged 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 as a machine operator. He began working for the employer on January 26, 2011 and his employment ended on January 23, 2020, when he was discharged.

The final incident leading to discharge occurred on January 21, 2020. It was brought to Mr. De Ruyter's attention that Mike, a co-worker with the claimant, had a lot of cash in a coffee cup in his locker. Mr. De Ruyter reviewed videotape from the locker area and witnessed the claimant go into Mike's locker and leave cash in a coffee cup.

When questioned about the incident, the claimant lied to his supervisors about why he was leaving cash in a coffee cup for Mike. The cash was for drugs that Mike had previously sold to the claimant. The claimant had received previous discipline for drug use on December 9, 2019. When management spoke to Mike, he confirmed that the cash was for a drug transaction. In a text message to Mr. De Ruyter on January 23, 2020, claimant admitted that he was using an illegal drug. See Exhibit B. Claimant was discharged for lying to management and for admitting to use of an illegal drug.

## REASONING AND CONCLUSIONS OF LAW:

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

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Claimant intentionally lied to management when interviewed about an incident and then admitted to Mr. De Ruyter that he was using an illegal drug. He knew that his use of an illegal drug would subject him to discharge pursuant to his previous warning in December of 2019. The employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

#### **DECISION:**

The February 20, 2020 (reference 02) unemployment insurance decision is modified with no change in effect. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn