

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JOHN TEGTMEIER**  
Claimant

**NASHUA-PLAINFIELD COMMUNITY  
SCHOOLS**  
Employer

**APPEAL 19A-UI-09795-AW-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/17/19**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the December 9, 2019 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 9, 2020, at 9:00 a.m. Claimant participated. Employer participated through Keith Turner, Superintendent. No exhibits were admitted.

**ISSUE:**

Whether claimant was discharged due to disqualifying, job-related misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time night custodian from July 15, 2002 until his employment with Nashua-Plainfield Community Schools ended on November 18, 2019. (Turner Testimony) Claimant worked Monday through Friday from 2:30 p.m. until 11:00 p.m. (Turner Testimony) Claimant's direct supervisor was Tim Fisher, Buildings and Grounds Director. (Turner Testimony)

Employer has a policy against harassment. (Turner Testimony) The policy is not included in an employee handbook. (Turner Testimony) Employees do not receive training about the policy. (Turner Testimony) Claimant was not aware of the policy. (Claimant Testimony)

On November 13, 2019, claimant was working the night shift with a female coworker, who was a new employee and significantly younger than claimant. (Turner Testimony) Throughout the evening, claimant struck his coworker on the coworker's buttocks three times. (Turner Testimony) The coworker did not ask claimant to stop because she was intimidated. (Turner Testimony) Employer learned of the incident on November 14, 2019 and placed claimant on administrative leave pending investigation. (Turner Testimony) Employer interviewed claimant and the coworker and reviewed text messages the coworker sent to her cousin discussing the incident. (Turner Testimony) Claimant denied striking his coworker on the buttocks. (Turner Testimony) Claimant later confided in another person that he was not truthful during the investigation. (Turner Testimony) That person informed employer of claimant's admission.

(Turner Testimony) On November 18, 2019, employer discharged claimant for harassment based upon his actions on November 13, 2019. (Turner Testimony)

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 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 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:

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 of misconduct 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). Further, 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).

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 cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness’s appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness’s interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find employer’s version of events to be more credible than claimant’s version of events. Specifically, claimant’s testimony was internally inconsistent.

Claimant struck his coworker on the buttocks *three* times. Even without a prior warning or awareness of employer’s harassment policy, claimant should have known that his actions were inappropriate. Claimant’s actions were a deliberate violation or disregard of standards of behavior employer had a right to expect of claimant. Claimant’s actions may even constitute criminal assault. See Iowa Code § 708.1. Claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are denied.

**DECISION:**

The December 9, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged due to disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

---

Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

---

Decision Dated and Mailed

acw/rvs