

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

KEITH JONAS
Claimant

APPEAL NO. 19A-UI-00974-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMESTEADERS LIFE CO
Employer

OC: 12/30/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Keith Jonas filed a timely appeal from the January 30, 2019, reference 01, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Jonas was discharged on January 4, 2019 for failing to perform satisfactory work despite having the ability to perform satisfactory work. After due notice was issued, a hearing was held on February 18, 2019. Mr. Jonas participated. Joe Sherrard represented the employer and presented additional testimony through Andrea Tiffany and Judy Ralston-Hansen. Exhibit A was received into evidence.

ISSUE:

Whether Mr. Jonas was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Keith Jonas was employed by Homesteaders Life Company as a full-time I.T. Help Desk Specialist from 2000 until January 4, 2019, when Joe Sherrard, Vice President for I.T. Network and Security, discharged him from the employment. Mr. Jonas' work hours were Monday through Thursday 7:00 a.m. to 4:00 p.m. and Friday 7:00 a.m. to 1:00 p.m. or 9:00 a.m. to 3:30 p.m. Mr. Jonas was one of three people who worked the I.T. help desk. Andrea Tiffany became Help Desk Manager a year before Mr. Jonas separated from the employment and was Mr. Jonas' immediate supervisor during that time. The employer has about 200 employees. Mr. Jonas' duties involved responding to employees' and customers' need for assistance with a variety of individual computer issues, computer network issues, and website issues. More than two-thirds of the requests for assistance were made by telephone. The employer consistently emphasized to Mr. Jonas the need to answer the Help Desk phone in a timely manner. Even if Mr. Jonas was working on another project or assisting someone in person, the employer expected Mr. Jonas to answer the phone for the limited purpose of getting the caller's contact information and telling the caller that he would get back to them. Despite the repeated directives, Mr. Jonas' practice was to not answer the phone until he was finished with the in-person request for assistance.

When Mr. Sherrard discharged Mr. Jonas from the employment, he had in mind two recent incidents from December 26, 2018. Mr. Sherrard was working in his office in the vicinity of the help desk on the morning of December 26 and heard two incoming calls go unanswered and roll over to the help desk cell phone. In response to the second call, Mr. Sherrard went to the Help Desk to answer the call and observed Mr. Jonas at his desk but not performing work. In other words, Mr. Jonas had elected not to answer the call and had elected to let the caller instead leave a message on the I.T. Help Desk cell phone. Mr. Sherrard directed Mr. Jonas to cease letting calls roll over to the cell phone. Also on December 26, the Customer Service Director complained to Mr. Sherrard that Mr. Jonas had been abrupt with her when she approached the I.T. Help Desk and requested assistance that morning. Mr. Jonas responded to the in-person request for assistance by stating "I'm busy" in an abrupt manner. The Help Desk had been dealing with virtual desk top logon issues that morning. When Mr. Sherrard looked into Ms. Hurt's complaint, two Network Administrators who had been working nearby confirmed that they had heard the exchange and that Mr. Jonas had indeed been abrupt with Ms. Hurt. Mr. Sherrard did not address this complaint with Mr. Jonas at the time. On Monday, December 31, Ms. Tiffany answered an I.T. Help Desk call that rolled over to her phone after it went unanswered by Mr. Jonas. At that time, Ms. Tiffany observed that Mr. Jonas was busying himself with his personal cell phone, rather than answering incoming calls for assistance.

The employer had been addressing Mr. Jonas' neglect of essential duties and demeanor issues for more than a year by the time Mr. Sherrard discharged Mr. Jonas from the employment. At the time of an annual performance review in June 2017, the employer discussed with Mr. Jonas his unsatisfactory work performance and the need for improvement. Mr. Jonas received a score of two on a five-point performance review scale. In May 2018 a customer service representative who had been able to get through to the Help Desk by telephone went to the Help Desk in-person in a frustrated state. In connection with that incident, Mr. Sherrard told Mr. Jonas that he needed to be answering the phone even if he was busy with something else. At an annual performance review in June 2018, the employer again discussed unsatisfactory work performance and the need for improvement.

When the situation had not improved by mid-September 2018, Mr. Sherrard and Ms. Tiffany placed Mr. Jonas on a performance improvement plan. The performance improvement document Mr. Jonas signed stated that Mr. Jonas needed to spend at least 70 percent of his work time logged onto the phone system ready to receive calls for assistance and that his percentage of unanswered calls needed to be reduced to one percent. During the month-long performance improvement plan, Mr. Jonas demonstrated the necessary improvement and successfully completed the performance improvement plan. The performance improvement document had stated that improvement needed to be sustained and that failure to do so could lead to discharge from the employment. During October 2018, Mr. Jonas' percentage of unanswered calls was 10 percent. During November 2018, the number of unanswered calls doubled to 20 percent. During December 2018, the number of unanswered calls increased to 34 percent, meaning that Mr. Jonas was letting one out of every three calls routed to him go unanswered. During that same period, the other full-time I.T. Help Desk Specialist had missed call percentages between zero and two percent. Ms. Tiffany continued to address the call avoidance issue and the need for improvement during her monthly one-on-one meetings with Mr. Jonas.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

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 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:

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, 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 weight of the evidence in the record establishes that Mr. Jonas was capable of completing his work duties in a satisfactory manner, but elected to engage in a pattern of unsatisfactory work performance that significantly interfered with the employer's operations. During the period covered by the performance improvement plan, Mr. Jonas demonstrated that he was fully capable of performing his assigned work duties in a satisfactory manner. After the performance improvement plan, the deficit in Mr. Jonas' work performance became progressively worse. The pattern of behavior involved an ongoing unreasonable refusal to follow the employer's reasonable directives. The pattern of behavior demonstrated an intentional and substantial disregard of the employer's interests and constituted misconduct in connection with the employment. Accordingly, Mr. Jonas is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Jonas must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The January 30, 2019, reference 01, decision is affirmed. The claimant was discharged on January 4, 2019 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs