

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DUSTIN ELSTON**  
Claimant

**HAGIE MANUFACTURING COMPANY**  
Employer

**APPEAL 21A-UI-03429-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/27/20**  
**Claimant: Appellant (2)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Dustin Elston, the claimant/appellant, filed an appeal from the January 12, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 24, 2021. Mr. Elston participated and testified. The employer participated through David Maxheimer, human resources manager.

**ISSUE:**

Was Mr. Elston discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Elston began working for the employer on September 3, 2019. He worked as a full-time painter. His employment was terminated on September 14, 2020.

The employer's handbook provides, in relevant part, that the company's values are respect, honesty and trust. An employee who violates any of the company's values is subject to discipline up to and including termination of employment.

In March 2020, the United States declared a public health emergency because of the COVID 19 pandemic. Due to the pandemic, the employer required all employees to check their temperature at one of two temperature checking stations located at the entry doors at the beginning of their shift. The employer informed employees about the new policy via text message, weekly company meetings, emails to managers to share with employees and by posting signs by the temperature check stations.

On September 10, 2020, Mr. Elston did not take his temperature before his shift. The evening of September 10, 2020, while at home, Mr. Elston did not feel well. He took his temperature at home at it was 100 degrees. Mr. Elston took medicine and went to sleep. The morning of Friday, September 11, 2020, Mr. Elston took his temperature again at home. He did not have a high temperature. Mr. Elston attended work at his usual time of 5:30 a.m. Mr. Elston did not

call his manager because he did not have a high temperature and he did not want to accrue any attendance points. Mr. Elston began to feel not well at about 9:00 a.m. Mr. Elston told his manager that he was not feeling well and that he had had a high temperature the previous night. The manager asked Mr. Elston how he got past the temperature check that morning. Mr. Elston said that he had checked his temperature at the temperature check station and he did not have a high temperature. Mr. Elston testified that he usually checked his temperature every day and thought he had done so that day. The manager sent Mr. Elston home and asked him to take his temperature at home and send it to the employer. Mr. Elston went home and took temperature. His temperature was high. Mr. Elston informed the employer who asked Mr. Elston to contact the local hospital about a COVID-19 test. Mr. Elston did so and hospital staff told Mr. Elston that he was not eligible for a COVID-19 test because he did have a high enough temperature.

The employer reviewed its video surveillance and saw that Mr. Elston had not taken his temperature on either day.

Over the weekend, Mr. Elston told his manager that he was feeling better. The manager told Mr. Elston that he could return to work on Monday, September 14, 2020. Mr. Elston did so. In the afternoon that day, the employer told Mr. Elston that his employment was terminated for dishonesty in violation of the company's values and for violating the employer's temperature check policy. Mr. Elston had no other disciplinary record.

Mr. Elston testified that he did not intentionally bypass the temperature check but that he forgot.

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

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

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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 must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, 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 believable evidence; 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 the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

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. 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 conduct for which Mr. Elston was discharged was an isolated incident of poor judgment. The employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence"

indicates culpability. Mr. Elston was careless, but his carelessness does not indicate “such degree of recurrence as to manifest equal culpability, wrongful intent or evil design” such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp’t Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided Mr. Elston is otherwise eligible.

**DECISION:**

The January 12, 2021, (reference 01) unemployment insurance decision is reversed. Mr. Elston was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



---

Daniel Zeno  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax 515-478-3528

March 25, 2021  
Decision Dated and Mailed

dz/kmj