

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHUKRI OMAR**  
Claimant

**ABM INDUSTRY GROUPS LLC**  
Employer

**APPEAL 19A-UI-08884-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/29/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 4, 2019, (reference 01) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 5, 2019. Claimant participated personally with the assistance of a Somali Interpreter, and was represented by Mark A. King, Attorney at Law. Employer participated by Malia Maples, Hearing Representative. Employer's Exhibits 1-10 and Claimant's Exhibits A-B were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 3, 2019. Employer discharged claimant on October 3, 2019, because claimant violated employer's insubordination and aggressive behavior policies.

Claimant began working for employer as a full-time general cleaner on June 23, 2014. On September 26, 2019 claimant observed supervisors inspecting bathrooms during their morning rounds. Claimant spoke to Ms. Rodriguez, Supervisor and she asked her if there was a problem. Ms. Rodriguez stated that she noticed that the bathroom floor had not been properly cleaned, and she told claimant to mop the floor. Claimant reminded Ms. Rodriguez that floors are mopped in the evening, and not during the morning to avoid falls from individuals using the restrooms. Ms. Rodriguez insisted that additional cleaning needed to be done. Claimant began to become irritated, and she told Ms. Rodriguez that she was not her supervisor. Ms. Rodriguez asked claimant to calm down, and the conversation became heated.

Ms. Rodriguez attempted to walk in and inspect one of the restroom stalls. Claimant blocked her access to the stall, and told her to stop what she was doing. Ms. Rodriguez began to feel threatened so she exited the restroom. Claimant continued yelling at her as she exited the

area. Claimant followed Ms. Rodriguez into the hallway and yelled, "Fuck you, Fuck you, Fuck you". Ms. Rodriguez left the building and she reported what had occurred to her superiors.

Employer conducted an investigation into the events that took place on that date. Employer interviewed claimant, and the two managers who observed claimant's behavior. Employer also reviewed claimant's personnel file, and it noted that claimant had been warned for similar conduct on or about February 28, 2019. Employer also noted that claimant was given a copy of its policies on June 23, 2014. At the conclusion of its investigation employer determined that it must terminate claimant's employment for violating its insubordination and aggressive behavior policies.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). 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). Willful misconduct can be established where an employee manifests an intent to disobey a future reasonable instruction of his employer. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). 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). 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).

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.*

Claimant failed to follow instructions, and she yelled obscenities at a supervisor. Claimant's aggressive acts caused a supervisor to fear for her own safety. Claimant had engaged in similar conduct on previous occasions, and she had been warned that her employment was in jeopardy.

Employer did provide sufficient evidence of deliberate conduct in violation of company policy, procedure, or prior warning. Claimant's conduct does evince such willful or wanton disregard of 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. Benefits are denied.

**DECISION:**

The November 4, 2019, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn