

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL D HICKSON

Claimant

APPEAL NO: 14A-UI-04726-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTIAN RETIREMENT SERVICES INC

Employer

OC: 04/06/14

Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 23, 2104 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the May 27 hearing. Steve Roe, the administrative CFO, and Rachel Napoli, the human resource director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2011. He worked full time as the director of dining services. The claimant was salaried, but the employer expected him to work a minimum of 40 hours a week. If the claimant did not work 40 hours a week, the employer expected the claimant to use his PTO time as other employees were required to do.

When staff reported concerns they had with the number of hours the claimant worked and his availability, Roe decided to monitor what the claimant worked. Since the claimant was responsible for two dining halls, Roe hoped he could explain to staff that he verified the claimant was working at one of two dining areas; they had just not seen him.

On March 31, Roe started recording when the claimant arrived at work and when he left. Roe noted that on March 31 the claimant reported to work around 6:40 a.m. and left around 1:50 pm. On April 1, the claimant reported to work around 6:10 a.m. and left just after 11 a.m. On April 2, the claimant again reported to work around 6:10 a.m. and left at 11:40 a.m. When the claimant left he did not tell anyone he was leaving for the day or not request Roe's permission to leave. Additionally, the claimant did not record any PTO time for any of these days.

The employer then reviewed the claimant's timecard since March 24. This review showed that on March 19, the claimant worked four hours and did not enter any PTO time; on May 24, the claimant was at work one hour and attended an off-site meeting that ended by 9:45 a.m. The claimant did not return to work after the off-site meeting and he did not enter any PTO time. On March 25 and 28, the claimant worked between 4.75 and 5.75 hours, but he did not enter any PTO hours. (Employer Exhibit One.)

On April 3, Roe and Napoli met with the claimant. During this meeting, the claimant told Roe he worked 5:30 a.m. to 3 or 3:30 p.m. Based on Roe's observations, he knew the claimant was not being truthful. As a result of the claimant's false claims and failure to explain why he had not entered any PTO time on days he worked less than eight hours, the employer no longer trusted the claimant. The employer told the claimant he could resign or the employer would discharge him. The claimant gave the employer his resignation on April 3.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When an employer gives an employee a choice to resign or be discharged, the employer has initiated this employment separation and has discharged the claimant.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence indicates the claimant understood PTO time could be used in less than eight-hour increments. He properly enforced the use of PTO times with employees he supervised. But since March 17, the claimant did not use PTO time in less than eight-hour increments. Employer Exhibit One establishes the claimant did not work a minimum of 40 hours a week between March 17 and 28, 2014. Even though the claimant may not have recorded PTO time correctly, the employer discharged him because he was not honest when he failed to accurately tell the employer he was not working a minimum of 40 hours a week. On April 3, the claimant told the employer he worked 5:30 a.m. to 3 or 3:30 p.m. every day, but he did not. When the claimant was not truthful, he deliberately disregarded the standard of behavior the employer had a right to expect from him. The claimant committed work-connected misconduct on April 3, 2014. The claimant is not qualified to receive benefits.

DECISION:

The representative's April 23, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of April 6, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs