

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DAVID K ELLIS
612 – 12TH AVE #1
CORALVILLE IA 52241

AMERICAN HOME PATIENT INC
C/O TAX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 03A-UI-12823-HT
OC: 01/04/04 R: 03
Claimant: Respondent (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

The employer, American Home Patient, Inc. (American), filed an appeal from a decision dated November 22, 2004, reference 02. The decision allowed benefits to the claimant, David Ellis. After due notice was issued a hearing was held by telephone conference call on December 22, 2004. The claimant previously notified the Appeals Section he did not intend to participate and did not do so. The employer participated by Branch Manager Kimberly Ronan, Respiratory Clinician Michael Wilkerson, General Manager Keith Frank and was represented by TALX in the person of Debbie Ansel. Exhibit One was admitted into the record.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: David Ellis was employed by American from April 7 until October 28, 2004. He was a full-time service technician.

On August 13, 2004, he received a written warning regarding inappropriate behavior. He had been rude and argumentative to a patient, during an in-service meeting he had interrupted the branch manager with negative and inappropriate remarks, and had told her that he did not need to "blow sunshine out his ass." The warning notified him that failure to improve could result in discharge.

On October 28, 2004, the claimant had been dispatched to deliver a wheelchair. He told the customer service representative, "fuck him, I'm not delivering a fucking wheelchair." Branch Manager Kimberly Ronan overheard him and told him to watch his language, and he responded by telling her to "shut up." Later that day, Ms. Ronan questioned the claimant about whether he had separated some papers which were to remain attached together. He became abusive and threw the papers at her.

The employer then consulted with the human resources representative and the district manager, Keith Frank. The decision was made to discharge the claimant and Mr. Frank notified him of the discharge over the phone later that day.

David Ellis has received unemployment benefits since filing an additional claim with an effective date of October 31, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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 claimant had been advised his job was in jeopardy as a result of his negative attitude, bad language and inappropriate conduct. In spite of the warning, he continued to be verbally abusive and physically aggressive to co-workers and supervisors, displayed insubordinate conduct and refused to follow orders. An employer has the right to expect employees will perform their regular job duties without resorting to bad language, physical aggression or insubordination. The claimant's conduct was conduct not in the best interests of the employer and he is disqualified.

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant has received unemployment benefits to which he is not entitled. These must be recovered in accordance with the provisions of Iowa law.

DECISION:

The representative's decision of November 22, 2004, reference 02, is reversed. David Ellis is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible. He is overpaid in the amount of \$1,500.00.

bgh/smc