

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PHIL D ALLENDER**  
Claimant

**APPEAL NO: 07A-UI-02478-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IA DEPT OF CORRECTIONS/FT MADISON**  
Employer

**OC: 02/11/07 R: 04  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Iowa Department of Corrections/Fort Madison (employer) appealed a representative's March 6, 2007 decision (reference 01) that concluded Phil D. Allender (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 28, 2007. The claimant participated in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from three witnesses, Deb Nickels, Phyllis Porter, and Leonard Short. During the hearing, Employer's Exhibit One was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 25, 2006. He worked full time as a corrections officer. His last day of work was February 13, 2007. The employer discharged him on that date. The reason asserted for the discharge was being away from his post during his shift on the night of February 9.

The claimant worked a night schedule normally from 9:45 p.m. to 5:45 a.m., Friday through Tuesday. On the night of Friday, February 9 in to Saturday, February 10, the claimant was assigned to the clinical care unit for inmates with special needs such as being suicidal or having medication needs. The claimant was out of the unit from 10:28 p.m. until 11:05 p.m. During that time he was in the unit control center, a video surveillance monitoring post. During part of the time the claimant was relieving the officer assigned to that post so that she could use the restroom; the remainder of the time the claimant visited with the officer about general events going on in the workplace.

The clinical care unit post orders specify that the assigned officer is to “conduct frequent rounds . . . Rounds will vary utilizing different routes and times of execution. Each offender will be checked at approximately thirty-minute intervals.” The claimant performed a check just before going to the control center and another just after returning. The claimant had understood from speaking with other officers that it was common or acceptable practice to spend some time at the control center when assigned to the clinical care unit. However, the employer received two complaints from other officers that the claimant had been absent from his assigned post. On February 12 Captain Short reviewed the video surveillance and determined the claimant was gone from the unit and in the control center for 37 minutes. Since the claimant had not been at his post to perform the rounds check at 30 minutes and had been in another area of the facility, the employer determined to discharge the claimant. The claimant had received no prior warnings or disciplinary actions.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is his being absent from his post, and particularly that it was for over 30 minutes. The administrative law judge notes that the post orders specify the rounds are to be at “approximately” 30-minute intervals, and finds that 37 minutes is still within that “approximate” time frame. The administrative law judge further observes that another provision of the post order requires the officer to “maintain security of the Pod Control Station,” which appears to be the same control center for the unit at which the claimant spent the 37 minutes, seemingly even requiring the claimant to at least periodically check on the control center<sup>1</sup>. At the hearing the employer asserted that after the claimant’s discharge a further review of the video surveillance was performed which suggested the claimant may have been away from his station at other occasions during the evening, but it is clear that this observation arose subsequent to the decision to discharge the claimant and was not the basis of the employer’s decision to discharge the claimant; those concerns cannot now be used to establish misconduct. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991).

Under the circumstances of this case, the claimant’s being away from the clinical care unit and in the unit control center for 37 minutes on this occasion was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

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<sup>1</sup> Even if the administrative law judge is mistaken as to whether the “Pod Control Station” is the same as the control center for the unit in which the claimant spent the 37 minutes, the other aspects of this reasoning and conclusions and the resulting decision in this case would remain the same.

**DECISION:**

The representative's March 6, 2007 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs