

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL VON HOLLEN
Claimant

APPEAL NO: 13A-UI-07623-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLS AND DALES CHILD DEVELOPMENT
Employer

OC: 05/26/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Michael Von Hollen (claimant) appealed an unemployment insurance decision dated June 18, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hills and Dales Child Development (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 29, 2013. The claimant participated in the hearing with Attorney David Kapler. The employer participated through Amy Rave, Chief Financial & Support Officer; Marilyn Althoff, Chief Executive Officer; Kathy Billmeyer, Compliance and Advocacy Director; Ryan Glaser, Shift Leader; Lisa Bernhard, ICF Program Director; and Attorney Joseph Kane. Human Resources Director Carol Boge was present but did not participate. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a licensed healthcare facility which provides services to children and young adults with severe and profound mental and physical disabilities. The employer operates a residential facility, a community center and a residential home. The claimant was employed as the full-time facility and support director from June 14, 2011 through May 21, 2013 when he was discharged for neglect of duties, failure to comply with safety and security rules, and a repeated refusal to follow directives.

In addition to planning, developing, and executing a system wide vision for facilities management, the Facilities and Support Director also oversees the administration, supervision and day-to-day operations for the following areas: "Maintenance, Environmental Services, Adaptive Equipment, Seamstress, Transportation, Security and Dietary/Food Services."

The claimant received a second step written warning on March 29, 2013 for not following safety licensing standards. On March 22, 2013, the Iowa Department of Health and Human Services conducted a survey of the employer's fire drills in accordance with their licensing standards under the NFPA 101 Life Safety Code Standard. The claimant is responsible for assuring the employer's licensing standard is met and he failed to document whether a fire drill was conducted on the third shift for the third quarter of 2012.

On May 11, 2013 at approximately 5:00 a.m., an intoxicated man unlawfully entered a residential apartment where children were housed. The man entered through the patio door to a common area. The patio door was not locked and there was no bar or pvc pipe put into the door frame so the door could not be opened. There were no residents present but staff member Ryan Glaser witnessed it and the man appeared disoriented and confused. Mr. Glaser called a taxi for the man and eventually contacted the police but the man had left at that point.

The compliance officer sent him a text message on May 11, 2013 directing him to schedule a safety meeting regarding the incident. No meeting was scheduled and the compliance officer sent the claimant an email on May 13, 2013 asking whether he had scheduled an interim safety meeting that day but he had not. There was a regularly scheduled meeting on May 15, 2013 and at the end of that meeting, he was told he needed to have the meeting scheduled by the end of the week. The meeting needed to address the investigation into what had occurred and how the incident was handled by on duty staff and supervision, as well as addressing how to prevent this type of situation from occurring again. The claimant's supervisor reminded him yet again on Thursday to schedule the safety follow-up meeting but it was still not scheduled by the following Friday. After the sixth reminder, the claimant finally scheduled the meeting for May 21, 2013. However, he did not invite all the necessary participants to the meeting and was not prepared for it even though the meeting was held ten days after the fact.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if he was discharged for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. It is the employer's burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989).

The claimant was discharged on May 21, 2013 for neglect of duty and a repeated refusal to follow directives. Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant ignored multiple directives to immediately hold a safety meeting following the May 11, 2013 break-in and when he finally held the meeting, he failed to invite all necessary parties and was not prepared. The claimant disputed the employer's evidence but his testimony is not as credible since he falsely denied receiving an email from Kathy Billmeyer on May 13, 2013 when in fact he did. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, his actions are misconduct. The employer has met its burden and benefits are denied.

DECISION:

The unemployment insurance decision dated June 18, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css