

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TORIN J WHITE
Claimant

APPEAL NO. 12A-UI-11066-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REM IOWA COMMUNITY SERVICES INC
Employer

OC: 08/19/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 6, 2012, reference 01, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on October 11, 2012. The claimant participated. The employer participated by Ms. Melinda Wetherell, program director. Employer's Exhibits 1 through 6 were offered into evidence but not received.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Torin White was employed by REM Iowa Community Services, Inc. from March 2011 until August 16, 2012, when he was discharged for failing to follow work directives. Mr. White was employed as a full-time direct support person working with disabled individuals. The claimant was paid by the hour. His immediate supervisor was Melinda Wetherell. Mr. White was discharged based upon his recurrent failure to follow reasonable and work-related directives to complete documentation of daily activities on a timely basis.

Mr. White had received a number of warnings from his previous supervisor for failure to submit required documentation on a timely basis and the claimant had been issued a final warning by his new immediate supervisor, Melinda Wetherell, on July 20, 2012. Although Ms. Wetherell had made accommodations allowing Mr. White to do his paperwork in her office and also offered to personally pick up the documentation to ensure its prompt arrival, Mr. White did not comply and was discharged. The documentation was needed to satisfy state administrative requirements and for billing purposes.

It is the claimant's position that he was not late with any of his paperwork, that it was current, and that his discharge was unjustified.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record is sufficient to warrant the denial of unemployment insurance benefits. It 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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this case, the evidence in the record establishes that Mr. White was most recently under the direct supervision of Melinda Wetherell, a program director for REM Iowa Community Services. Mr. White was specifically placed on notice on July 20, 2012, that his employment was in jeopardy for recurrent failure to submit necessary paperwork in a timely manner. The evidence establishes that the program director even went to the extraordinary length of allowing Mr. White to do his paperwork in her office and that the program director also personally offered to pick up the paperwork on a regular basis to ensure that it was not lost or otherwise mishandled. In spite of the accommodations offered by Ms. Wetherell and the final warning issued to Mr. White, the claimant continued to fail to submit paperwork as required and was discharged from employment.

Although the administrative law judge is aware that Mr. White maintains that all paperwork was timely submitted and that there was no problem with paperwork, the administrative law judge concludes the claimant's testimony strains credibility.

After considering the matter, the administrative law judge concludes the employer has sustained its burden of proof in establishing intentional disqualifying job misconduct on the part of Mr. White. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated September 6, 2012, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw