

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL S LLOYD**  
Claimant

**APPEAL NO. 13A-UI-05922-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 04/14/13**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the May 7, 2013, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 8, 2013. Claimant participated. Employer participated through human resources representative Shauna Schroeder and general manager Randy Mulder.

**ISSUE:**

Was the claimant discharged for disqualifying job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an alarm response officer from March 2011 and was separated from employment on April 10, 2013. Mulder told him at the end of his shift to cover a Mid-American site for about two hours until a replacement could be located. Claimant tried to tell him he was not feeling well enough (vertigo) to cover those duties for the entire shift but Mulder did not allow him time to explain and told him to start the shift or find a new job. Claimant arranged for a replacement and conducted courier duties for about 20 or 30 minutes until the replacement arrived. Security coordinator and immediate supervisor Brandon Veith and Mulder knew he had performed the duties and arranged for a replacement. Veith discharged claimant via text message and told him he was no longer employed with Per Mar and instructed him to turn in company property. Veith is still employed but was not called as witness because he was on assignment at the time of the hearing. Claimant returned the property as requested on April 17. Schroeder hired him so he checked with her about his employment status. Mulder and Schroeder both told him the termination stood because Mulder told Mid-American to deactivate the claimant's badge.

The employer told him on April 11, 2013, he would not be reinstated as an alarm response officer but it may pursue other positions within the company if he had an interest. The effective date of the claim for unemployment insurance benefits is April 14, 2013.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential

liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was merely an isolated incident of inability to work as requested due to illness. That is a good cause reason for refusing the assignment. In spite of claimant doing as he was instructed, he was discharged. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

The issue of the offer of work is not addressed because it was made prior to the benefit year and falls outside of the administrative law judge's jurisdiction.

**DECISION:**

The May 7, 2013 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs