

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FRED C METCALF**

Claimant

**APPEAL NO. 10A-UI-12073-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SAMARITAN SOCIETY INC**

Employer

**OC: 07/25/10**

**Claimant: Respondent (1)**

Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the August 17, 2010, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on October 12, 2010. Claimant Fred Metcalf participated personally and was represented by Steven Gardner, attorney at law. Doug Williamson represented the employer and presented additional testimony through Dana Holland. Exhibits One through Four, A, C, D, and E were received into evidence. The hearing in this matter was consolidated with the hearing in Appeal Number 10A-UI-12072-JTT, in which the issues and the facts were the same as in the present matter.

Mr. Holland voluntarily terminated his participation in the hearing just as soon as the employer representative finished his questions for Mr. Holland and immediately before the claimant's attorney was to begin his cross-examination of Mr. Holland. Mr. Holland thereby deprived the claimant of his due process right to cross-examine Mr. Holland.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Fred Metcalf was employed by Good Samaritan Society, Inc., as a full-time human resources associate from 1993 until July 27, 2010, when Dana Holland, administrator, discharged him for failing to attend a training session on July 22, 2010. Mr. Metcalf had made a prior request for paid time off, which request included July 22, 2010. The employer had approved the request for time off. Prior to July 22, Mr. Holland had the office manager notify Mr. Metcalf that he needed to participate in the July 22 training session. Mr. Metcalf told the office manager at that time that he had already made arrangements to be out of town based on the prior approval of his paid time off request. Neither Mr. Holland nor anyone else formally communicated to Mr. Metcalf that his request for paid time off was rescinded. Mr. Metcalf left for his vacation and did not attend the July 22 training session. When Mr. Metcalf appeared for work on July 27, 2010, Mr. Holland discharged him from the employment, based on the failure to attend the training session. The

training session was designed to address issues relating to the conduct of background checks before employees were allowed to commence employment. Mr. Holland decided to require the training session after a recent incident involving an employee who had been allowed by a charge nurse to commence employment prior to completion of the background check. Mr. Metcalf had not authorized the employee to start employment prior to completion of the background check. On July 16, 2010, Mr. Holland had issued a reprimand to Mr. Metcalf and to the other human resources associate after the employee had been allowed to start without completing the requisite background check, though neither human resources associate had authorized the employee to start work before completion of the background check.

The employer's discharge of Mr. Metcalf from the employment occurred in the context of a pending civil rights complaint that Mr. Metcalf had filed with the Iowa Civil Rights Commission on July 20, 2010.

The employer's discharge of Mr. Metcalf from the employment also occurred in the context of the employer's plan to significantly reduce Mr. Metcalf's work hours.

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

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 benefits.

Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a “current act,” the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

This case presents two allegations of misconduct. The first is that Mr. Metcalf was discharged for misconduct based on his absence from the July 22, 2010 training session. The second is that Mr. Metcalf was discharged based on insubordination for failing to comply with the employer’s directive that he participate in the July 22, 2010 training session.

A single unexcused absence does not constitute misconduct for purposes of determining a claimant eligibility for unemployment insurance benefits. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). Thus, regardless of whether the administrative law judge concludes July 22 absence from the training session was an excused or unexcused absence, the absence itself did not constitute misconduct in connection with the employment that would disqualify Mr. Metcalf for benefits. The administrative law judge does find that the employer appropriately communicated to Mr. Metcalf that his request for paid time off was rescinded in so far as the approved time conflicted with the July 22, 2010 training session. Mr. Metcalf, as the human resources associate, could have no question as to the meaning of the office manager’s communication to him that the employer expected him to appear for July 22 training. Thus, Mr. Metcalf’s absence on July 22 was indeed in unexcused absence.

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

This case presents an isolated incident wherein Mr. Metcalf failed to follow the employer’s directive. Mr. Holland’s conduct during the hearing, specifically his intentional, untimely decision to end his participation in the hearing, along with other evidence, strongly suggests that Mr. Holland likes to make up, as he goes along, the rules that he then expects others to follow. The weight of the evidence suggests that the employer intentionally scheduled the July 22, 2010 training session so that it would conflict with the paid time off the employer had previously

approved for Mr. Metcalf. The evidence fails to present any other reason as to why the training had to occur on that particular day. The administrative law judge concludes that the employer's last-minute notice to Mr. Metcalf that he must forgo his planned vacation so that he could participate in a brief training session was unreasonable. The administrative law judge also concludes that Mr. Metcalf's refusal to alter his plans after he had notice that he was expected to participate in the training session was unreasonable. Given the unreasonable aspect of the employer's timing of the training, the administrative law judge cannot find a single instance of Mr. Metcalf refusing to follow a reasonable directive. Even if the administrative law judge found that Mr. Metcalf had refused to follow a reasonable directive in connection with failing to attend the July 22, 2010 training session, the evidence fails to establish any other similar conduct, and fails to establish a pattern of refusal to follow reasonable employer directives. Accordingly, the evidence fails to establish insubordination in connection with the employment that would disqualify Mr. Metcalf for unemployment insurance benefits.

Mr. Metcalf was discharged for no disqualifying reason. Accordingly, Mr. Metcalf is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Metcalf.

**DECISION:**

The Agency representative's August 17, 2010, reference 02, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw