

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COBY COOPER**  
Claimant

**APPEAL NO: 17A-UI-01098-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF SIOUX CITY**  
Employer

**OC: 12/25/16**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 20, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 21 and continued on February 23, 2017, for the purpose of admitting exhibits. The claimant participated in the hearing. Alex Zimmerman and John Danke, Labor Supervisors and Justin Vondrac, Assistant City Attorney, participated in the hearing on behalf of the employer. Employer's Exhibits 1 through 5 were admitted into evidence.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time maintenance employee for the City of Sioux City from September 1995 to October 6, 2016. He was discharged because the employer felt he did not abide by the terms of a grievance settlement agreement entered into September 22, 2016.

On July 18, 2016, the claimant tested positive for methamphetamine and his employment was terminated (Employer's Exhibit 4). The claimant grieved his termination and on September 22, 2016, entered a settlement agreement with the city whereby he was required to attend and successfully complete drug rehabilitation treatment (Employer's Exhibit 1). The claimant started inpatient treatment at Keystone Treatment Center September 23, 2016. On Friday, September 30, 2016, the claimant and Keystone personnel agreed the claimant no longer required in-patient treatment and he was referred to Jackson Recovery Center for outpatient treatment. He was instructed to contact Jackson Recovery Center and his union the following week. The claimant called Jackson Monday, October 3, 2016, and stated he might be going out of town for a couple days but called back October 4, 2016, and scheduled his assessment appointment with the understanding he would begin outpatient treatment October 10, 2016. The employer learned the claimant was not in a treatment program the week of October 3,

2016, and on October 8, 2016, it sent the claimant a certified letter notifying him his employment was terminated for failing to complete treatment (Employer's Exhibit 4).

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

For the reasons that follow, the administrative law judge concludes the 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer maintains the claimant failed to abide by the settlement agreement because he called Jackson and said he would be unavailable for the next two days and left no phone

number for them to return his call, the claimant did call Jackson October 3, 2016, and again on October 4, 2016, at which time he scheduled an assessment and date to begin outpatient treatment.

Neither the grievance settlement agreement nor any of the employer's other exhibits state that either an outpatient program or aftercare program must be resumed within a certain period of time following the inpatient treatment. The claimant was instructed to call Jackson October 3, 2016, and he did so. While he may not have been available that day, he called back October 4, 2016. He could not start outpatient treatment without an assessment and Jackson could not accommodate him for an assessment until October 10, 2016, at which time he was scheduled to start outpatient treatment. If the agreement stated the claimant needed to be in inpatient treatment and outpatient treatment or aftercare continuously without any breaks, the claimant could well have been in violation of that agreement. As the agreement stands, however, the fact that there was a lapse of possibly one day when the claimant did not schedule the assessment and beginning of outpatient treatment, the administrative law judge cannot conclude the claimant's actions constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

**DECISION:**

The January 20, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs