

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY C GRAHAM
Claimant

APPEAL NO. 06A-UI-09718-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON CARE CENTER INC
Employer

**OC: 09-03-06 R: 04
Claimant: Appellant (1)**

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 27, 2006, reference 01, fact-finder's decision that concluded the claimant was not qualified to receive unemployment insurance benefits because the claimant was discharged for dishonesty in connection with his work. After hearing notices were mailed to the parties a telephone conference hearing was conducted in Des Moines, Iowa on October 18, 2006. Claimant participated and testified at the hearing. Participating and testifying as witnesses for the employer were Teletha Guither, Administrator, and Ms. Jane Schenk, Registered Nurse. Employer's Exhibits One through Eight were received into evidence. Claimant's Exhibits A through D were received into evidence.

ISSUE:

Did the claimant voluntarily quit employment for reasons that qualify him to receive unemployment insurance benefits or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds the following facts: Mr. Graham was employed as a maintenance supervisor for the captioned care center from March 28, 2000 until September 5, 2006. The claimant was employed on a full-time basis. His immediate supervisor was Teletha Guither, Administrator.

The claimant was discharged from his employment after a review of company records determined that the claimant had falsified monthly required fire drills at the facility. The employer initially became suspicious as individuals listed for a specified fire drill were no longer employed by the organization at the time of the alleged fire drill. Further investigation showed that individuals listed by Mr. Graham as being present at other fire drills were not on duty at the time. The employer investigated further and determined that the claimant had not been conducting the monthly fire drills as required but instead had verified on company documents that the drills had taken place. Drills are to be conducted on a monthly basis rotating between work shifts. Drills for the third shift are to be conducted in a simulated manner. Mr. Graham

was aware of his job responsibilities and the requirements to conduct monthly fire drills but did not do so.

It is the claimant's position that he failed to conduct monthly drills because he was "too busy" and that the requirement the drills be conducted for the third shift would be disruptive. Mr. Graham did not report the fact that he was not conducting these drills to the facility's administrator or to his immediate supervisor, Ms. Schenk.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The evidence in the record establishes that the claimant was discharged under disqualifying conditions. The claimant was informed at the time of hire and during the orientation of the requirement that he conduct monthly fire drills to insure that proper procedures and equipment were in place and operable. Although aware of his monthly responsibility, Mr. Graham did not conduct the drills as required. The claimant instead falsified company documents to make it appear that the drills had taken place. The claimant did not report to his immediate supervisor or to the administrator that he was too busy to perform the drills or that other factors had prevented him from doing so. The claimant instead falsified the reports to make it appear that the drills had taken place and that procedures and equipment were in place and operable.

It is the opinion of the administrative law judge based upon the evidence in the record that the claimant's conduct was a willful and intentional disregard of the employer's interests and reasonable standards of behavior that it had the right to expect of its employees under the provisions of the Iowa Employment Security Law. The claimant's falsification was a violation of company policy and jeopardized the well being of staff and residents. The claimant did not

follow a reasonable course of action by informing his supervisor or the administrator of any extenuating circumstances which may have prevented him from performing the drills as required. The administrative law judge thus finds that the claimant was discharged for misconduct in connection with his work.

DECISION:

The agency representative's decision dated September 27, 2006, reference 01, is affirmed. The claimant was discharged for misconduct. The claimant is disqualified from unemployment insurance benefits until he has worked in and has been paid wages from insured work equaling ten times the weekly benefit allowance, provided that he meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs