

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE A GREENWOOD
Claimant

APPEAL NO. 09A-UI-02370-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**Original Claim: 01-18-09
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 9, 2009. The claimant did participate. The employer did participate through Shannon Hagensten, Recruitment and Retention Specialist.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as a youth care worker, full-time, beginning April 4, 2005, through January 15, 2009, when he was discharged.

The claimant suffers from HHT (Hereditary Hemorrhagic Telangiectasia) and Factor 7 Deficiencies. Both conditions leave him susceptible to frequent nose bleeds at work. On January 13, some other employees who worked after the claimant discovered blood smeared on a door and bloody towel on the side of the laundry hamper. The employer is required to comply with the OSHA blood-borne-pathogens standards, which attempts to control and limit employees' exposure to blood or blood-borne pathogens. The employer provided the claimant with bleach solution in a red bottle to clean up after he experienced a bloody nose or any other bloody discharge. The employer learned that the blood smear on the door and the bloody towel were the result of the claimant experiencing a bloody nose at work on the evening of January 13. The claimant admitted that the bloody rag and blood smear were his. The claimant knew that when he experienced any bloody discharge he was required to clean up in such a manner that other employees or youth clients would not be exposed to his blood. The claimant had previous warnings for his failure to follow the employer's blood-borne-pathogen standard. The claimant was given a verbal warning on July 13, 2007 for not cleaning up bloody discharge. The claimant was given a second written warning about his failure to clean up blood or bloody stools on December 28, 2008. At that time, the claimant was told that another incident of violation of the blood-borne-pathogen regulation could lead to his discharge. On one occasion,

the claimant left a Styrofoam cup with blood in it on the desk that he shared with coworkers. The claimant told the employer that if any employees discovered that he had left blood or discharge to call him and he would return to the job site and clean it up. The claimant was to clean the blood up when the incidents occurred, not just when someone complained or noticed that he had failed to clean up. The claimant had been instructed that any bloody rags were to be disposed of in bio-hazard bags the employer provided.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant knew that he was to follow the employer's blood-borne-pathogen standards and to clean up any blood or bloody discharge. The claimant knew or should have known that leaving a blood-soaked rag on the side of the laundry bag was not acceptable. The claimant had been given all of the materials and training necessary to follow and comply with the standards but did not do so. The claimant had been warned several times previously about his failure to follow the regulation and knew that his job was in jeopardy if he failed to fully comply with the clean-up procedures. The claimant's offer to come back to the facility to clean up any left over blood is not an acceptable substitute for his failure to follow the employer's regulations.

The claimant's repeated failure to follow the blood-borne-pathogens regulations amounts to misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The February 11, 2009, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw