

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J GILBERTSON
Claimant

APPEAL NO: 11A-UI-06331-ST

GENESIS SENIOR LIVING CENTER
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/10/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 29, 2011, reference 01, that held he was discharged for misconduct on April 8, 2011, and benefits are denied. A telephone hearing was held on June 8, 2011. The claimant participated. Terry Farber, Dietary Manager, and Tammy Little, Administrator, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a part-time cook/dietary aide on May 21, 2007, and last worked for the employer on April 8, 2011. The employer has a policy that prohibits employees from taking food from the facility. Employees are permitted to consume employer food in the facility, but are not allowed to take it from it.

Dietary manager Farber received employee complaints that someone was taking employer food and placing it on a cooler by the back door. On April 8, Farber observed some bread and a cottage cheese container with chicken tetrazzini by the back door. He summoned the facility administrator and they confronted the claimant about it because of suspicions he might be involved.

Claimant admitted he placed the food items by the back door with the intention of taking them. He believed the food items was not usable for future consumption and intended to feed it to animals/birds. The employer discharged him for theft of company property.

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on April 8, 2011, for theft of food items.

The claimant either knew or should have known that taking employer food without permission (whether left-over or not) is an act of theft, and it constitutes job disqualifying misconduct.

DECISION:

The department decision dated April 29, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on April 8, 2011. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css