

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MUSTAFA TOPICANA**  
Claimant

**APPEAL NO: 12A-UI-12295-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 09/16/12**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 8, 2012, reference 02, that held the claimant was not discharged for misconduct on September 18, 2012, and which allowed benefits. A telephone hearing was held on November 7, 2012. The claimant did not participate. Mary Eggenburg, benefits specialist, and Akwasi Boateng, food service manager, 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 on August 12, 2008, and last worked for the employer as a part-time food service employee on September 18, 2012. An intern made a report to management of an observation that claimant failed to properly sanitize himself when serving food to a patient on September 3. Claimant admitted to the intern that he did not follow the sanitation policy as it was posted on a patient's door.

The employer manager investigated the matter and consulted with higher management. The employer terminated claimant on September 18 for failing to follow the employer sanitation policy.

**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 failed to establish that the claimant was discharged for misconduct in connection with employment on September 18, 2012.

The employer discharged claimant based on a one-time report from an intern observation that claimant failed to follow the sanitation policy. Since there was no prior warning and evidence of similar violations, job disqualifying misconduct is not established.

**DECISION:**

The department decision dated October 8, 2012, reference 02, is affirmed. The claimant was not discharged for misconduct on September 18, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw