

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN S EVELAND
Claimant

APPEAL NO. 09A-UI-07575-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/WOODWARD
Employer

**Original Claim: 04/19/09
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Iowa Department of Human Services/Woodward (claimant) appealed a representative's May 11, 2009 decision (reference 01) that concluded Nathan S. Eveland (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 10, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. David Williams of TALX Employer Services appeared on the employer's behalf and presented testimony from one witness, Diane Stout. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 2, 2005. He worked full time as a resident treatment worker in one of the residential cottages in the employer's residential training facility for persons with mental retardation. His last day of work was January 31, 2009. The employer suspended him on that date and discharged him on March 19, 2009. The reason asserted for the discharge was an allegation of abuse.

On or about January 29, a male youth of approximately age 14 alleged that on January 27 the claimant had pushed him up against a wall, causing a bruise. The employer did an internal investigation, which was not able to substantiate the allegation. The claimant had denied the allegation, and the employer had no other conclusive information. However, the employer ultimately did discharge the claimant due to the allegation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v.

IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the allegation of abuse. The employer's witness admitted that its own investigation was inconclusive. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not shown to be misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's May 11, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw