

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND A STELZER

Claimant

APPEAL NO. 10A-UI-12687-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 08/08/10

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 3, 2010 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held on February 7, 2011 in Cedar Rapids, Iowa. Claimant participated and was represented by Marcus Mills, Attorney at Law. Employer participated through Staff Benefits Specialist Mary Eggenburg and Program Associate Heather Baumhauer. Claimant's Exhibits A through D were admitted to the record.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time research assistant from November 10, 2008 through August 5, 2010. On August 3 he left work at approximately 11 a.m. after telling his office mate Joni he was going downtown. Before returning at 12 noon, he received a page from someone in the department, so he called and asked Joni for a coworker's telephone number. The normal procedure for reporting time off is to verbally give or e-mail notice to supervisor. He did not notify anyone he was leaving for lunch and had not been asked to do so in the past or notified that he was not properly giving notice to the employer. Claimant is a salaried employee and salaried hours are flexible. He was called to a July 21, 2010 in meeting with Baumhauer and a lab director about a July 19 incident when claimant became angry after getting a page about a subject for an appointment. He swore and slammed down the phone receiver. He did not throw anything. He apologized to his coworker even though the statement was not directed at her. Attendance was mentioned as an aside at the meeting and he was not advised that he might be subjected to further discipline for the incident. He had not received a performance review during his employment.

The employer would not have discharged him for the attendance issue on August 3 alone but would have terminated him solely for the July 19 behavior issue.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

871 IAC 24.32(8) provides: "Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past act or acts. The termination of employment must be based upon a current act." A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

Inasmuch as employer had warned claimant about the July 19 incident on July 21 without indication that discipline was still pending and there were no incidents of related alleged

misconduct thereafter, the employer has not established that as a current or final incident of misconduct. The final incident of absence that triggered the termination was reported and claimant had no prior related attendance warning; thus, the employer has not met the burden of proof to establish excessive, unexcused absenteeism or that claimant acted deliberately in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

DECISION:

The September 3, 2010 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw