

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W MARSH
Claimant

APPEAL NO. 17A-UI-01243-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOMINIUM MANAGEMENT SERVICES LLC
Employer

OC: 12/25/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

David W. Marsh, the claimant, filed a timely appeal from a representative's decision dated January 31, 2017, reference 03, which denied unemployment insurance benefits, finding the claimant was discharged from work on December 30, 2016, for failure to follow instructions in the performance of his job. After due notice was provided, a telephone hearing was held on February 24, 2017. Claimant participated personally. Although duly notified, the employer did not respond to the notice of hearing and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: David W. Marsh began employment with Dominion Management Services LLC in approximately January of 2007. Mr. Marsh was employed as a full-time maintenance worker and was paid by the hour. His last immediate supervisor was Ms. Brandi Haight, Property Manager. Mr. Marsh was discharged from his employment on December 27, 2016, when the employer believed that Mr. Marsh had not followed instructions to place ice melt on the apartment complex's sidewalks and to perform two maintenance tasks as directed.

Prior to the beginning of the Christmas holiday weekend, the complex property manager instructed Mr. Marsh to perform two routine maintenance tasks before the holiday weekend and to place ice melt on complex sidewalks as needed. The claimant had informed his supervisor that he was having transportation problems and the claimant was authorized to delay the service work, but was expected to put the ice melt out as needed over the weekend.

Mr. Marsh completed the two maintenance repairs over the holiday weekend and had placed the ice melt on the complex sidewalks over the weekend as well. Mr. Marsh used bags of ice melt that were located in the maintenance area and did not use the bags that were stored in the company's administrative office. It appears that when the property manager saw that the bags

of ice melt has obviously not been used, she concluded that the ice melt had not been placed out as she had directed. Although Mr. Marsh attempted to explain what had happened during the discharge meeting, he was nonetheless discharged from employment.

Leading up to his termination from employment, Mr. Marsh had recently been given a number of warnings and negative evaluations regarding his work performance and his attendance. These warnings were issued after he had informed the company that he was suffering from cancer. It is the claimant's belief that the company wanted to "get rid of him" after he had informed them of his medical condition, as he had received no negative evaluations or warnings prior to that event.

Mr. Marsh testified that after informing the employer of his medical condition, the employer increased his work and he was required to perform extra duties that he was not trained for and that took substantial periods of time away from other work. The claimant worked to the best of his abilities, but was not able to meet the employer's expectations because of his medical condition.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. Such misconduct must be "substantial." Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 deemed misconduct within the meaning of the statute.

Based upon the evidence in the record, the administrative law judge concludes that the claimant was working to the best of his ability, but was unable to meet the employer's increasing job expectations. The final incident that resulted in Mr. Marsh's discharge took place when his supervisor mistakenly believed that Mr. Marsh had not followed her directives, although the claimant had followed the instructions and attempted to explain to the employer at the time of termination.

The evidence in the record does not establish disqualifying misconduct. Unemployment insurance benefits are allowed, provided Mr. Marsh is otherwise eligible.

DECISION:

The representative's decision dated January 31, 2017, reference 03, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa Law.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs