

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY M BRENEMAN
Claimant

APPEAL NO. 11A-UI-01096-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 12-26-10
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 2, 2011. The claimant did participate. The employer did participate through Christy Niehaus, Human Resources Business Partner, and Sandra Petersen, Nurse Manager of Methodist West Emergency Department. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a paramedic specialist full time beginning in September 2009 through December 16, 2010 when he was discharged.

As part of his job duties the claimant was required to wear the specified uniform for a paramedic specialist. The uniform was a pair of navy blue scrub pants, a gray scrub shirt with a white long sleeve t-shirt underneath. If he wanted to wear an additional layer for warmth, he was required to wear either a corporate logo jacket or an approved jacket. The employer's policy also requires that any employee who has a tattoo keep the tattoo covered at all times when they are at work. It does not matter what the tattoo is, it must be covered.

On January 21, the claimant was warned by his nurse manager that his tattoos were visible and that he was wearing a non-approved gray fleece vest. The claimant was told that his tattoos had to remain covered at all times. Because the claimant's tattoos are on his arms, that meant he was required to wear at all times a long sleeved white t-shirt under his gray scrub shirt at all times.

On April 23, 2010 the claimant was again told that the t-shirt and sweatshirt he was wearing were not appropriate in the clinical area. The claimant knew what the approved uniform was for paramedic specialists.

On August 5, 2010 the claimant was again disciplined for failing to have his tattoos covered while working in the clinical areas. He also was wearing a gray fleece jacket that was not approved. When his manager spoke to him the claimant complained about his sleeves getting wet when he washed his hands. He was told about the proper use of hand sanitizer and he was again told that he had to comply with the employer's policy that all tattoos remain covered while an employee was working.

On August 9, 2010 the claimant was given a verbal warning for again working without having his tattoos covered. By this time the claimant had been told on at least three separate occasions that he was required to wear long sleeves and to keep his tattoos covered.

On November 24, 2010 the claimant was given a second level written warning that he adhere to the dress policy when he was seen wearing a non-approved black fleece jacket.

On November 28, 2010 the claimant was given a third level probationary warning for again failing to have his tattoos covered while he was working. A patient had commented to another nurse unfavorable about the claimant's tattoos.

On November 17 the claimant had gotten into an argument with a billing clerk Sadida. At that time he was told that he was expected to continue to work with Sadida. Sadida was disciplined for her part in the argument. The claimant was told that he was expected to continue to work with Sadida. At no time did Sadida threaten to physically harm the claimant. While he might not have liked Sadida, he was required to work with her. On December 14, 2010 the claimant refused to work with Sadida.

On December 2, 2010 the claimant was again seen working in the emergency room without his tattoos covered.

The claimant was discharged for refusing to work with another employee, and for his repeated ongoing failure to keep his tattoos covered while he was working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant was repeatedly told by a number of different supervisors that he had to keep his tattoos covered while he was at work. The content of the tattoos was not the issue. The claimant had to wear long sleeves to keep his tattoo covered but he consistently flaunted the requirement by pushing his sleeves up.

The claimant may not have liked Sadida, but the administrative law judge is not persuaded that the claimant was physically fearful of Sadida. He simply did not like her and did not want to work with her. Claimant had been told that he was required to work with Sadida but refused to do so. Additionally, and more significantly, claimant's repeated failure to follow the employer's policy that he cover his tattoos after having been warned is evidence of disregard of the employer's policy to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

DECISION:

The January 20, 2011 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs