

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S FODAY
Claimant

APPEAL NO. 13A-UI-13393-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

OC: 11/10/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Foday (claimant) appealed a representative's December 5, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Broadlawns Medical Center (employer) for failure to perform satisfactory work of which he was capable of performing. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for March 24, 2014, in Des Moines, Iowa. The claimant participated personally. The employer participated by Julie Kilgore, Vice President of Human Resources, and Adam Maus, Director of Environmental Services. The employer offered and Exhibit One, Two, and Three were received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 23, 2012, as a full-time environmental services technician. The claimant signed for receipt of the employer's handbook. On October 24, 2012, the employer issued the claimant a performance evaluation that had areas of concern regarding the claimant's performance. On June 13, 2013, the employer issued the claimant another performance evaluation with an overall rating that did not meet performance standards. The claimant was placed on probation and the employer notified the claimant that further infractions could result in termination from employment. On September 18, 2013, the employer issued the claimant a written warning for complaints about his performance. The employer showed the claimant photographs of unemptied trash cans, items on the floor, and cabinets that had not been cleaned. The employer notified the claimant that further infractions could result in termination from employment.

On November 10 and 11, 2013, the claimant was supposed to working the overnight shift. The employer discovered he spent more than two hours studying for his classes on the employer's computer when he should have been working. The employer retrieved the computer records and found that in the last two weeks of employment the claimant spent seven shifts on the

employer's computer's studying when he was supposed to be working. The employer terminated the claimant on November 12, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 5, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from

work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css