

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACOB A EMMERT
Claimant

APPEAL 20A-UI-12967-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEQUEL YOUTH SERVICES OF
WOODWARD**
Employer

OC: 07/12/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant, Jacob A. Emmert, filed an appeal from the October 12, 2020, (reference 01) unemployment insurance decision that denied benefits based upon discharge for conduct not in the best interest of employer Sequel Youth Services of Woodward. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2020. The claimant participated and testified. The employer participated through human resources director Marcia Dodd. Claimant's Exhibit A was admitted. Employer's Exhibits 1-4 were admitted.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a youth counselor. He began working for this employer on November 29, 2020, and his employment ended on July 16, 2020 when he was discharged.

On January 27, 2020, claimant was written up for insubordination and conduct; specifically, for failing to keep his interactions with students professional.

On April 26, 2020, claimant was written up for substandard work and carelessness; specifically, for failing to properly supervise students allowing them to steal items from an office. The warning stated future substandard work and carelessness could lead to further disciplinary action up to and including termination.

On April 29, 2020, claimant was written up for substandard work and carelessness; specifically, for failing to properly supervise students leading to a physical altercation between students. The warning stated future substandard work and carelessness could lead to further disciplinary action up to and including termination.

On July 16, 2020, claimant was terminated for substandard work, carelessness, and conduct; specifically, for failing to properly supervise students leading to a medication, trusting students rather than verifying information with management, and oversharing information with students. The medication theft occurred on June 17, 2020 and the incident involving the tunnels occurred in April 2020. Claimant could not remember the medication theft incident and stated he was unaware taking students to the tunnels was a prohibited activity.

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 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa

Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to be careless by failing to supervise students after having been warned about the same on two previous occasions. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The October 12, 2020, (reference 01) unemployment insurance 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.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

December 22, 2020
Decision Dated and Mailed

sa/scn