

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A DOUGLAS
Claimant

APPEAL NO: 11A-UI-10808-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**OC: 08/01/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michael A. Douglas (claimant) appealed a representative's August 12, 2011 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Per Mar Security & Research Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2011. The claimant participated in the hearing. Heidi Rios appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 25, 2011. He worked full time as EMT security officer at the employer's Burlington, Iowa heavy equipment manufacturing business client. His last day of work was July 23, 2011. The employer discharged him on that date. The stated reason for the discharge was continued poor job performance after prior warnings.

The claimant had been given written warnings regarding productivity and communication issues on May 20 and June 3, 2011. He was advised that having a third write-up could result in discharge. One of the issues which had been specifically addressed with him was the need to properly communicate details about an employee's visit to the claimant's office to the employee's supervisors as well as to the claimant's own supervisor and Ms. Rios, the account manager.

On July 16 an employee came to the claimant's office complaining of illness, and was allowed to go home sick. Also that day another employee came to the claimant's office regarding a cut on his arm. The claimant sent an email regarding seeing these two employees only to his supervisor and Ms. Rios, not to those employees' supervisors. Further, the details he included regarding the reason those employees were seen were very sketchy, in particular, not even

noting that the cut for which the one employee was treated was reported as not being work-related. As this was the same type of issue for which the claimant had been previously warned, the employer determined to give the claimant a third write-up and discharge him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant has not demonstrated any acceptable reason for failing to provide the type of communication or detail required by the employer. His repeated failure to comply with the employer's requirements shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 12, 2011 decision (reference 02) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving

unemployment insurance benefits as of July 23, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs