

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 04A-UI-03366-SWT
OC 02/22/04 R 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 17, 2004, reference 03, that concluded the claimant was not disqualified from receiving unemployment insurance benefits because he had completed a work assignment on May 13, 2003. A telephone hearing was held on April 19, 2004. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Linda Watson participated in the hearing on behalf of the employer with a witness, Jeannene Clark. Exhibit One was admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked part-time for the employer as a certified nursing assistant from November 17, 2002, to May 13, 2003. The claimant was informed and understood that

under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled.

After working on May 13, 2003, the claimant accepted a work assignment on May 16, 2003, from 3:00 to 11:00 p.m. The claimant failed to report to work at the assigned time and failed to notify the employer about his absence. The employer called the claimant at about 4:00 p.m. and asked him if he was going to report to work. He said he was not going to work that day but did not provide a legitimate reason for his failure to report to work or his failure to call the employer as the work rules required. As a result, the employer terminated the claimant's employment.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 22, 2004. His weekly benefit amount was determined to be \$165.00. The claimant was paid wages of over \$1,650.00 during the fourth quarter of 2003.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The employer's account is not subject to charge for benefits paid to the claimant.

The claimant is not disqualified from receiving unemployment insurance benefits based on his separation from the employer because he earned more than ten times his weekly benefit amount before filing for unemployment insurance benefits in February 2004.

DECISION:

The unemployment insurance decision dated March 17, 2004, reference 03, is modified in favor of the employer. The claimant was discharged for work-connected misconduct but the claimant is not disqualified from receiving unemployment insurance benefits based on this separation because he earned more than ten times his weekly benefit amount before filing for unemployment insurance benefits in February 2004. He remains disqualified based on his separation from Colonial Manor. The employer's account will not be charged for benefits paid to the claimant.

saw/pjs