

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MERLE WALTER**  
Claimant

**APPEAL NO. 07A-UI-00321-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SOUTH CENTRAL HOME HEALTH INC**  
Employer

**OC: 11/26/06 R: 03  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 29, 2006, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 25, 2007. Claimant participated personally and was represented by Ronald Rieper, Attorney at Law. Employer participated by Dustria Relph, Attorney and Nurse Consultant, and Lila Demmer, Administrator. Employer Exhibits One through Ninety Two and Claimant Exhibits One through Six were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on September 22, 2006.

Claimant was discharged on September 22, 2006 by employer because claimant told his supervisor that he did not like being on call. Claimant was also discharged for watching a movie at work. Claimant did not watch a movie during work hours. Claimant did not refuse to work on call. Claimant had multiple warnings on his record for work performance and attitude.

**REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning work performance and attitude. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because there is no current incident of poor work performance for which the discharge was based. All the prior incidents were subjected to verbal warnings. The final incident of poor attitude is not misconduct because claimant did not refuse to perform his work. An opinion that on call was the worst part of the job is not sufficient to constitute misconduct. Employer did not prove that claimant was watching a movie while on call. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated December 29, 2006, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw