

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EUGENE S HANSEN
Claimant

APPEAL NO. 09A-UI-17707-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 10-04-09
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 18, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on January 5, 2010. The claimant did participate. The employer did participate through Shauna Webster, Branch Human Resources Manager and Cory Harstad, Operations Manager. Employer's Exhibit One was received. The record was left open until January 7 for the employer to submit additional exhibits which were admitted into the record as part of Employer's Exhibit One.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a security officer full time beginning March 2, 2007 through October 5, 2009 when he was discharged.

The claimant had a set work schedule that included Sunday, Wednesday, Thursday and Friday. He had been given the company policies that provided that any employee who wanted to switch work shifts or give up his hours to another employee had to get a manager's permission. The employer wanted to insure that overtime was kept under control by insuring that employees were not picking up too many hours that put them into overtime status. The claimant knew that he had to have permission to give away his shifts. The claimant was giving away many of his shifts to another employee who wanted to pick up hours. During the month of September the claimant was scheduled to work 17 shifts. He gave away four or almost one-quarter of his work shifts to another employee. The last shift the claimant gave away was his Sunday September 20 work shift. The claimant did not get permission from his supervisor to give away the work shift to the employee who eventually took it. The claimant's testimony at hearing that he worked all or most of the Sundays in the month of September is not supported by the payroll records. The claimant worked only two of the four Sundays in September. In March 2009 the claimant was given a verbal warning about working too few of his shifts putting other employees into overtime status. In May 2009 the claimant was given his second warning for unauthorized

disabling of an alarm. The employer discovered on October 5 that the claimant had given away his work shift of September 20 without authorization. When the employer discovered that the claimant had given away his work shift in direct contradiction to the instruction he had been given by his supervisor, the claimant was discharged for three warnings in a one-year period. The claimant's absences from January through October 2009 are found in employer's exhibit one.

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 § 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 claimant knew that he had to have permission from his supervisor before he could allow another employee to work one of his shifts. The claimant did not have permission to give away his scheduled Sunday work shift on September 20. Additionally the claimant had been warned that his failure to work his scheduled shifts was unacceptable. The claimant did receive the employer's policies which put him on notice that three warnings in a one-year period could result in his termination. The employer wanted to insure that employees were not being put into overtime status by picking up other's work schedules. Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The claimant did not get the proper permission to give away his

work shift on September 20 and had been warned about the same behavior in a prior warning. The employer has established deliberate substantial misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The November 18, 2009, reference 01, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs