

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD W GOHRING
Claimant

APPEAL NO. 11A-UI-09891-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRANDVIEW HEIGHTS INC
Employer

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

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated July 19, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 18, 2011. Claimant participated. Employer participated by Chris Wolf, administrator. The record consists of the testimony of Chris Wolf and the testimony of Ronald Gohring.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nursing facility located in Marshalltown, Iowa. The claimant was hired on June 18, 2010, as a full-time housekeeper. The claimant's last day of work was June 28, 2011. The claimant was terminated on June 28, 2011.

The incident that led to the claimant's termination occurred on June 28, 2011. The claimant was operating a vacuum cleaner. The owner of the facility felt that the claimant was operating the vacuum cleaner at an unsafe speed. She asked the claimant to slow the cleaner down. The claimant did slow down but the owner went to the administrator to complain about the claimant. The administrator went out and found the claimant. She asked him to slow down and she then stopped the cleaner. She told the claimant he was terminated.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Insubordination, which is the continued failure to follow reasonable instructions, constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The employer has the burden of proof to show misconduct.

The claimant was terminated because the employer perceived that he was operating a vacuum cleaner in an unsafe manner and failed to slow down when requested to do so. The first individual who asked the claimant to slow down was the owner. She did not testify at the hearing. She went to the administrator, Chris Wolf, to complain about the claimant, and it was Ms. Wolf who went to the claimant and shut off the machine. She then terminated the claimant. Whether the claimant used profanity is disputed by the parties. The claimant denied he used profanity.

The claimant testified that he had been criticized the previous day for working overtime and so he was hurrying to get his work done so that he could leave at 4:30 p.m. He denied operating the vacuum cleaner in an unsafe manner or that there were residents nearby that could have

been in danger. The administrative law judge concludes that there is insufficient evidence in this record to conclude that the claimant was insubordinate or engaged in the use of profanity with a supervisor. Since the employer has not provided sufficient evidence of misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 19, 2011, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs