

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN S BOHN
Claimant

APPEAL NO. 14A-UI-00276-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CALVIN COMMUNITY
CALVIN MANOR**
Employer

**OC: 12/01/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nathan Bohn (claimant) appealed a representative's January 2, 2014 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Calvin Community (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2014. The claimant participated personally. The employer participated by Kathy Shriner, Director of Assisted Living, and Vickie Wagner, Human Resource Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 7, 2012, and at the end of his employment he was working as a full-time certified nurse's aide and certified medication manager. The claimant signed for receipt of the employer's policies on December 27, 2013. On November 4, 2013, the employer issued the claimant a written warning for a medication error and another warning for not coming into training after the training had been cancelled. The claimant felt uncomfortable with his supervisor who always yelled at him. The supervisor had him confused with another person.

On November 28, 2013, a co-worker told the supervisor that the claimant left for break at 8:00 p.m. and was late returning. This was untrue. The supervisor called the nurse as the claimant was returning. The claimant asked the co-worker about this. The nurse said she wanted to leave at 9:00 even though she still had residents to see. The co-worker yelled at the claimant and said "fuck you." The claimant argued with the co-worker that she should not leave if she still had residents. The co-worker said "fuck you" many times. The co-worker then left, told the nurse that the claimant yelled at her and made her feel uncomfortable. The employer terminated the claimant on December 5, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for which he was terminated. In addition, he provided another eye witness to testify. The employer provided written statements to support its case. The statements could not be questioned as a witness could. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's January 2, 2014, decision (reference 03) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs