

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREG A SINDT
Claimant

APPEAL NO. 13A-UI-03436-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES
Employer

OC: 02/24/13
Claimant: Respondent (1-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Advance Services, filed an appeal from a decision dated March 20, 2013, reference 02. The decision allowed benefits to the claimant, Greg Sindt. After due notice was issued, a hearing was held by telephone conference call on April 23, 2013. The claimant participated on his own behalf and was represented by Willis Hamilton. The employer participated by Risk Management Specialist Michael Payne. Exhibits One, Two and Three were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Greg Sindt was employed by Advance Services from September 4, 2012 until December 10, 2012. His last assignment began on November 12, 2012, at People for Pets. He had been injured on a prior job and this was the only work available which would not violate his restrictions. The client was not being billed for his hours as it was a volunteer organization but the employer was paying his hours.

The pay period which ended December 2, 2012, showed he worked eight hours every day, Monday through Friday. Donna Erickson, the director of People for Pets, declined to sign the time card because she said Mr. Sindt had not worked those hours that week. The claimant maintained he had medical appointments and physical therapy during work hours and had been told by Deb, who apparently is the one who handles payroll for the employer, to put down his hours and note at the side how much time he spent at therapy or with the doctor.

On December 10, 2012, the claimant came to the office to present a doctor's note to Human Resources Coordinator Robin Cain and at that time she said he was being fired for falsifying his time cards. When he explained the instructions given to him by Deb, the employer stated he was still being fired.

The claimant may be under medical restrictions but his availability for work has not been determined.

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.

The employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not provide anyone with firsthand, eyewitness testimony as to the events and circumstances leading to the decision to discharge the claimant. It is apparent no investigation was done to confirm or rebut the claimant's assertion regarding the instructions given to him by Deb. No testimony was presented from Deb or the director of People for Pets to confirm how she knew what hours Mr. Sindt worked during the week in question.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

It must be determined if the claimant is able and available for work and this should be determined by UIS division.

DECISION:

The representative's decision of March 20, 2013, reference 02, is affirmed. Greg Sindt is qualified for benefits, provided he is otherwise eligible.

The issue of whether the claimant is able and available for work due to his medical restrictions is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll