

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK J EGIDI
Claimant

APPEAL NO. 10A-UI-09753-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUNAT PAYROLL INC
Employer

**OC: 06/30/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 30, 2010, reference 01, that held the claimant was not discharged for misconduct on January 8, 2010, and that allowed benefits. A telephone hearing was held on August 26, 2010. The claimant participated. Annette Benkusky, HR Director; Dawn Loughren, Leasing Manager; and Rick Schloss, Maintenance Worker, participated for the employer. Employer Exhibits 1 through 6 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time maintenance coordinator on October 8, 2009. The employer issued a written warning to claimant on December 15, 2009 for failing to handle his on-call responsibilities. Manager Loughren had a conference with claimant about work performance issues relating to his keys (or key pad) to access apartments when needed, preparing apartments for occupancy, and snow removal.

The employer noted the claimant was late to work on seven occasions in December. On January 7, 2010, there was a snowstorm that required all employees to help with snow removal. Manager Loughren questioned why claimant was spending so much time in the shop and why he wasn't operating a snow blower.

The employer conferred regarding the claimant's work performance and it discharged the claimant on January 8 for an unsatisfactory work performance.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on January 8, 2010.

The employer issued one written warning to the claimant for a single issue related to his on-call duties, and yet it discharged him for numerous job performance issues for which it issued no written warning. There is no evidence that claimant had a further on-call issue. While the claimant may have failed to perform his duties in a satisfactory manner, there is no evidence that it was deliberate or the result of intentional misconduct.

DECISION:

The department decision dated June 30, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on January 8, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw