

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD S DURRELL
Claimant

APPEAL NO. 06A-UI-09631-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

5TH JUDICIAL DISTRICT
Employer

OC: 09/03/06 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2006, reference 01, fact-finder's decision that held the claimant was not eligible to receive unemployment insurance benefits because the claimant was discharged for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties a telephone conference hearing was conducted in Des Moines, Iowa, on October 17, 2006. The claimant participated and testified. Testifying as a witness for the employer was Ms. Jennifer Reynoldson, Probation/Parole Supervisor.

ISSUES:

Did the claimant voluntarily quit employment for reasons that qualify him to receive unemployment insurance benefits? Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

Having reviewed all the evidence in the record the administrative finds the following facts: Mr. Durrell was employed by the 5th Judicial District Department of Correctional Services from December 19, 1997 until September 5, 2006, when he was discharged from employment. Mr. Durrell worked on a full-time basis. His immediate supervisor was Jennifer Reynoldson.

Mr. Durrell was discharged after he failed to provide an amended report and failed to appear timely at a probation revocation hearing on August 29, 2006. The claimant was also not properly prepared to present evidence or testimony regarding whether the offender had been led to believe that his probation had previously been ended. A review of the claimant's work by his supervisor showed that Mr. Durrell had numerous cases in which reports had not been filed and other necessary procedural matters had not been completed or properly notated.

Mr. Durrell had previously been suspended from work in July 2006 for failure to keep his case file within department standards and problems associated with calling in sick. The claimant had been warned and counseled on numerous occasions in the past by other supervisory personnel regarding failure to meet work deadline and proper maintenance of case files. In an effort to

assist Mr. Durrell his most recent supervisor, Ms. Reynoldson had brought his case files in to compliance while Mr. Durrell was suspended.

It is the claimant's position that his inability to perform at the level of competence that was expected by the employer was due to factors largely beyond his control which included a heavy workload, equipment failures and unavailability of overtime.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with the employment. It does.

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.

In this case a decision was made to terminate Mr. Durrell from his position of a probation/parole officer 2, based upon his repeated failures to follow reasonable work directives regarding the timely submission of presentence investigations, reports, documents, and other work-related matters. During the course of his employment Mr. Durrell had been warned on numerous occasions regarding his failures to complete work in a timely manner. The claimant had been warned and suspended prior to being discharged. In an effort to assist the claimant, his most recent supervisor had personally brought Mr. Durrell's caseload up to standards during his most recent period of suspension. Although his caseload was within standards at the time he returned from suspension, in an approximately two-month period the claimant had again failed to properly complete documents and close files as required.

A final decision was made to terminate Mr. Durrell when the claimant reported late for a probation revocation hearing after failing to provide an amended report of violation. It was also determined that the claimant had made statements that the offender's probation had ended when Mr. Durrell had not completed the process to end the offender's probation. A review of the claimant's case files at that time demonstrated to the employer Mr. Durrell had once again not maintained his case files to acceptable standards during the most recent two months since his supervisor had personally assisted him. Mr. Durrell had been recognized on a number of occasions by organizations in the correctional field and had thus demonstrated his ability to perform the duties incident to his job in the past.

Although the administrative law judge is cognizant that Mr. Durrell maintains that he was prevented from performing the duties of his job due to factors beyond his control, the administrative law judge finds the employer's expectations were not unreasonable. During the final incident Mr. Durrell did not act professionally. The claimant did not report to the hearing on time and was unprepared when he did report.

Based upon the hearing record, the administrative law judge finds that the claimant's conduct taken as a whole shows a disregard for the employer's interests and standards of behavior that the employer has a right to expect of its employees under the provisions of the Iowa Employment Security Law. Therefore, the administrative law judge finds that the employer has sustained its burden of proof in showing the claimant's discharge took place under conditions that make him ineligible to receive unemployment insurance benefits.

DECISION:

The Agency representative's decision dated September 21, 2006, reference 01, is affirmed. The claimant was discharge for misconduct and is disqualified for unemployment insurance benefits until he has worked and has been paid wages for insured work equally ten times his weekly benefit allowance, provided that he meets all other eligibility requirements.

Terence Nice
Administrative Law Judge

Decision Dated and Mailed

cs/cs