

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY D CLEVELAND
Claimant

APPEAL NO: 13A-UI-02508-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF HUMAN SVCS/GLENWOOD
Employer

OC: 02/03/13
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 February 28, 2013, reference 01, that held the claimant was not discharged for misconduct on February 4, 2013, and benefits are allowed. A telephone hearing was held on March 28, 2013. The claimant participated. Kathy King, Treatment Program Administrator; Barry Hiller, Investigator; and Sandra Linsin, Representative, participated for the employer. Employer Exhibits 1 and 2 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 witness testimony and having considered the evidence in the record, finds: The claimant began employment on October 10, 2011, and last worked for the employer as a full-time residential treatment employee on December 8, 2012.

Claimant was arrested for a domestic assault abuse at work by Glenwood police on December 8, 2012 and was incarcerated. He was released from jail and on December 10 he signed for the receipt of an employment investigative suspension with pay. The suspension document changed claimant's work hours from his second shift to 8:00 a.m. to 4:00 p.m., Monday through Friday. It requires claimant to be available to his supervisor by telephone during this period.

The employer investigated the domestic assault abuse offense. It did not occur at the workplace and the victim was not an employee. The offense is a serious misdemeanor. During the investigation, the employer changed focus from the offense to an issue of whether claimant had a valid driver's license that it acknowledges was not an employment requirement.

The claimant and employer had periodic telephone contact through December 28. The employer terminated claimant by January 3, 2013 letter for being absent from work without

authorization for three consecutive days. The employer termination is based on claimant being on unauthorized leave for December 31, January 2 and 3.

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 claimant was discharged for misconduct in connection with employment on January 3, 2013.

Claimant's paid suspension is not based on any act of misconduct in connection with employment. He was arrested for a non-work-related domestic assault that did not occur at the workplace. The employer changed the paid investigative suspension focus from the assault arrest to unauthorized leave because claimant allegedly failed to produce proof of his driver's license with a failure to maintain phone contact with the employer for three days. It provided no notice to claimant his leave status had changed with a message that a failure to report would result in employment termination. It failed to establish specific times and dates it attempted to contact claimant on and after December 28.

There is a great difference between an employee who fails to report for scheduled work on a specific date and time and not being available for phone contact during an eight-hour period on a day-to-day basis. The claimant was not required to perform work during the paid suspension,

so the decision to change his work status from suspension to unauthorized leave without notification to claimant is not a justifiable basis for employment termination to deny UI benefits.

DECISION:

The department decision dated February 28, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on January 3, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css