

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A EVANS
Claimant

APPEAL NO. 09A-UI-02756-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON
MEMORIAL HOSPITAL
Employer

Original Claim: 01/25/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Richard A. Evans filed a timely appeal from an unemployment insurance decision dated February 18, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held March 10, 2009, with Mr. Evans participating and presenting additional testimony by Alan Hupp. Benefits Specialist Kathy Heuwinkel and Second Shift Team Leader Roxanna McDonald participated for the employer, Jennie Edmundson Memorial Hospital.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Richard A. Evans was employed by Jennie Edmundson Memorial Hospital from May 18, 2001, until he was discharged January 23, 2009. He last worked as a cleaning technician. The final incident leading to the discharge occurred on January 20, 2009. In the break room, Mr. Evans made the comment, "My belly sticks out further my dicky do." Some coworkers took offense to that statement.

In December of 2008, Mr. Evans had served a three-day suspension for making a comment to the effect that a room he had just cleaned was "full of shit." The husband of the patient who had just been transferred from that room heard and reported the statement.

In October 2008, Second Shift Team Leader Roxanna McDonald gave Mr. Evans a verbal counseling after Mr. Evans offered to show naked pictures on his cell phone to a coworker. The coworker declined, but a supervisor who was present was offended.

REASONING AND CONCLUSIONS OF LAW:

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

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 evidence in this record establishes three incidents in just over three months in which Mr. Evans made inappropriate comments in the presence of coworkers and, in once instance, in the presence of a family member of a patient of the hospital. The record establishes that Mr. Evans received discipline from which a reasonable person could have reasoned that such comments were inappropriate in the workplace and would not be tolerated. This evidence is sufficient to establish misconduct. Benefits are withheld.

DECISION:

The unemployment insurance decision dated February 18, 2009, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw