

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A SANCHEZ
Claimant

APPEAL NO. 11A-UI-00066-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA RESIDENTIAL CARE
Employer

**OC: 10/24/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Area Residential Care (employer) appealed a representative's December 23, 2010 decision (reference 02) that concluded Richard Sanchez (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 8, 2011. The claimant was represented by Christopher Fry, Attorney at Law, and participated personally. The employer participated by Teri Pitzen, Human Resources Director, and Cindy Leifker, Community Services Director.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 3, 1998, as a full-time apartment instructor. The claimant signed for receipt of the employer's handbook on August 3, 1998. The employer did not issue the claimant any warnings during 2009 or 2010.

In September 2010, the claimant pled guilty to misdemeanor disorderly conduct charge. The disorderly conduct did not occur while the claimant was working or on the employer's property. The Department of Human Services (DHS) prohibits persons with certain an abuse conviction from being involved in the care field. The employer suspended the claimant on October 8, 2010, and terminated him on October 22, 2010, after DHS stated it would not allow the claimant to work in the health care field.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's December 23, 2010 decision (reference 02) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs