

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

DANIEL J JUNKO  
6701 SW 9<sup>TH</sup> ST  
DES MOINES IA 50315

CENTRAL IOWA HOSPITAL CORP  
c/o HUMAN RESOURCES  
1313 HIGH ST STE 111  
DES MOINES IA 50309-3119

Appeal Number: 04A-UI-12360-DW  
OC: 10/24/04 R: 02  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Daniel J. Junko (claimant) appealed a representative's November 15, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Central Iowa Hospital Corp. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on December 8, 2004. The claimant participated in the hearing. Karen Pierick, a human resource business partner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

## FINDINGS OF FACT:

The claimant started working for the employer on May 28, 1973. The claimant worked full time in the food service department. During the last two to three years of his employment, the claimant's job included cleaning pots and pans. Bill Smith had been the claimant's most recent supervisor.

The employer has a progressive disciplinary policy. When the employer notices a problem, the employee first receives a verbal warning. The next time there is a problem; the employee receives a written warning. If the problem continues, the employer can either put the employee on probation or suspend the employee. The final step in the employer's progressive discipline is termination.

At various times in the claimant's employment, the employer started the disciplinary process. It was not until 2003 that the employer noticed a problem with the claimant's work performance. About this same time, the claimant did not like the employee who was assigned to work with him. The claimant concluded this employee was lazy and did not do his share of the job, which meant the claimant had to do more work. The claimant complained about the co-worker and tried to get transferred to another area, but there were no jobs for the claimant when he looked.

The claimant received a verbal warning on August 22, 2003. When a supervisor talked to the claimant about the dirty pots and pans he had left, the claimant indicated he only had two hands and was not god. The employer gave the claimant the verbal warning for unsatisfactory job performance and insubordination. On September 3, 2003, the claimant received a written warning for not having a clean workstation and for failing to complete all the necessary paperwork, which verified he followed specific sanitation guidelines or rules. On September 19, 2003, the employer put the claimant on probation for failing to presoak trays before he put them through the dishwasher.

The claimant knew the employer was trying to discharge him and would discharge the claimant if he received any more warnings for unsatisfactory job performance. On October 22, 2003, an employee brought back dirty pans at the end of the claimant's shift. The pans had been used to bake chickens. The claimant knew he would be discharged if he did not get the pans cleaned. The claimant ran the pans through the dishwasher so it would be easier to scrape the pans. The claimant did not believe he had time to presoak the pans to get them clean.

On October 27, 2003, the employer discharged the claimant for unsatisfactory job performance because this was the last step in the employer's progressive disciplinary process.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes the employer discharged the claimant for business reasons and pursuant to the employer's progressive disciplinary process. The claimant's testimony that he did the job to the best of his ability must be given more weight than the employer's reliance on hearsay information from supervisors who did not testify at the hearing. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of October 24, 2004, the claimant is not disqualified from receiving benefits based on the reasons for the October 27, 2003 employment separation.

As of the date of the hearing, the claimant is not eligible to receive unemployment insurance benefits because there is no evidence he has earned at least \$250.00 in wages from insured employers since October 27, 2003. When the claimant has earned at least \$250.00 from insured employment, he should reopen his claim and provide proof of his wages or earnings.

If this case is reviewed or remanded, the issue of whether the employer filed a timely protest or appeal must be noticed. This case is not remanded to the Claims Section at this time because the claimant's separation was determined to be for nondisqualifying reasons.

(It appears the employer was the claimant's only employer when he established his first benefit year during the week of October 26, 2003. The claimant received his maximum weekly benefits of \$7,800.00 during this benefit year. The employer received quarterly statements indicating its account had been charged based on the benefits the claimant received. Since the claimant was found eligible to receive benefits during his first benefit year, October 26, 2003, through October 23, 2004, the representative who issued the November 15, 2004 decision and found the claimant disqualified had no basis in law or legal authority to make this decision under these facts.)

#### DECISION:

The representative's November 15, 2004 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of October 24, 2004, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

dlw/pjs