

**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**

**BOB L CHRISMAN  
1374 VANDENBURG CR  
SERGEANT BLUFF IA 51054**

**BOYS & GIRLS RESIDENTIAL  
TREATMENT CENTER INC  
PO BOX 1197  
SIOUX CITY IA 51102-1197**

**RICHARD STURGEON  
WORKERS' ADVOCATE  
WORKERS HAVE RIGHTS TOO  
P O BOX 3372  
SIOUX CITY IA 51102-3372**

**Appeal Number: 05A-UI-01439-S2T  
OC: 01/09/05 R: 01  
Claimant: Appellant (1)**

**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 is 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 for Misconduct

STATEMENT OF THE CASE:

Bob Chrisman (claimant) appealed a representative's February 1, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Boys & Girls Residential Treatment (employer) for failure to follow instructions in the performance of his job. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 24, 2005. The claimant was represented by Richard Sturgeon, Workers' Advocate, and participated personally. The employer participated by Mark Nielsen, Human Resources Specialist.

#### 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 November 10, 2003, as a full-time residential counselor. On November 1, 2004, the employer gave the claimant an evaluation which indicated the claimant had inappropriate interactions with others. In a warning dated December 4, 2004, the employer warned the claimant about inappropriate touching of others. On April 21, 2004, the claimant was warned after he touched a client's waist. The claimant was warned on May 4, 2004, after referring to co-workers as sweetheart or honey. On May 12, 2004, the employer gave the claimant a warning for not using proper techniques to subdue a client.

On or about January 3, 2005, co-workers complained to the employer about the claimant's behavior. The claimant gave co-workers back rubs, hugged one person and touched their shoulders and legs. The claimant did not realize co-workers would be offended. He was raised to touch people and call them sweetheart and honey. The employer suspended the claimant on January 3, 2005, and terminated him on January 7, 2005, for inappropriate behavior after having been warned.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). Repeated unintentional careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by acting inappropriately after having been warned repeatedly. The claimant may have been raised to touch people without taking into account their feelings, but there was no reason presented which indicated he could not stop this behavior. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's February 1, 2005 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/s