

**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**

**THOMAS R ALLISION  
832 – 24<sup>TH</sup> ST  
DES MOINES IA 50312**

**MERCY HOSPITAL  
ATTN HUMAN RESOURCES  
1055 – 6<sup>TH</sup> AVE STE 105  
DES MOINES IA 50314**

**Appeal Number: 04A-UI-04746-H2T  
OC 03-28-04 R 02  
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, 4th 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/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 19, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 25, 2004. The claimant did participate. The employer did participate through Ron Robertson, Employee Relations Coordinator, and Gregg Daniels, Manager Environment Services.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a environmental services worker full time beginning September 25, 1995 through March 30, 2004, when he was discharged. The claimant was caught on March 24, 2004 by his supervisor jogging on a treadmill in the Wellness Center at 6:45 p.m. The claimant's break that night was from 6:00 p.m. until 6:30 p.m. The claimant admits that he

was not on his break when he was in the Wellness Center and that he did not have permission to be there. The claimant was suspended for one day on October 13, 2004 when he was caught in the doctor's lounge on October 10, 2004 watching the Cubs game on TV at 7:45 p.m. The claimant had been previously warned not to take unauthorized breaks and had been warned that his job was in jeopardy.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's rights by taking unauthorized breaks. The claimant did not have permission to be working out in the Wellness Center when he was supposed to be working. The claimant had previously been disciplined and suspended for the same conduct, that is taking unauthorized breaks. The claimant's disregard of the employer's rights and

interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The April 19, 2004, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/b