

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIKE D SCHUKNECHT**  
Claimant

**APPEAL NO. 10A-UI-09417-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEALTH CARE SERVICE GROUP**  
Employer

**OC: 05/16/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 25, 2010 (reference 04) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 18, 2010. Claimant did not participate but authorized Julie Traver to speak on his behalf. Employer participated through Arlinda Glyfe. Employer's Exhibit 1 (the fact-finding record) was admitted to the record.

**ISSUE:**

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked part-time as a housekeeper since February 22, 2010 and was separated from employment on May 11, 2010. On that date she found him standing, leaning against a mop watching television. In the March 2 overall review the employer reminded him to wipe the area behind the television and pay attention to cleaning details but did not warn him not to watch television. (Employer's Exhibit 1, page 2) In the April 2 inspection report employer noted improvement but reminded him about cleaning behind doors again and advised him aides had noticed him watching television, talking, and disappearing for long periods of time. (Employer's Exhibit 1, pages 5, 5a) On April 28, 2010 Shane employer gave him an overall written review and noted complaints of finding him in the basement reading or with his eyes closed, not responding to pages after a half hour, and watching TV and talking with residents for long period of time. (Employer's Exhibit 1, page 11) In the May 3 the employer unit inspection report employer warned him to make sure the TVs are off. (Employer's Exhibit 1, page 7) On another occasion employer reminded claimant to make sure TVs are off, respond to pages promptly, keep breaks to the prescribed limits. (Employer's Exhibit 1, page 9)

## 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 § 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 Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990).

Claimant's repeated failure to abstain from watching TV, taking long breaks, disappearing from work areas and not responding to pages, which prevented him from performing and completing his work duties after having been warned is evidence of willful disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The June 25, 2010 (reference 04) 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.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs