

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON M SPARROW
Claimant

APPEAL NO. 10A-UI-12156-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

**OC: 07/18/10
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Jason Sparrow, filed an appeal from a decision dated August 16, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on October 19, 2010. The claimant participated on his own behalf. The employer, Optimae Lifeservices, participated by Administrative Assistant Connie Dusek and Program Coordinator Tammy Hudson

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Jason Sparrow was employed by Optimae Lifeservices from April 27, 2009 until July 20, 2010 as a full-time team leader. Part of his job duties was to take "on call" for a week on a rotating basis. This required him to carry a company cell phone 24 hours a day for a week to take emergency calls from employees and clients.

The claimant was taking the on call duties for the week of July 16 through 23, 2010. On July 19, 2010, Program Director Tammy Hudson read in the newspaper that the claimant had been arrested for public intoxication in the early morning hours of Sunday, July 18, 2010. She called him and he admitted he had been drinking and had been in jail from around 3:00 a.m. until 9:00 a.m. on July 18, 2010. During that time he had no access to the cell phone. Ms. Hudson notified him she would have to discuss this situation with Program Director Barb Whitten.

The facts were discussed between Ms. Hudson and Ms. Whitten and the decision was made to discharge the claimant for being under the influence of alcohol while on duty, and for failing to be available to accept emergency calls for six-hour period while he was in jail. Mr. Sparrow was notified of this the next day at a meeting with Ms. Hudson and Administrative Assistant Connie Dusek.

REASONING AND CONCLUSIONS OF LAW:

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.

The claimant violated a known company rule by drinking while taking the weekly on call. By his actions he also rendered the emergency notification inaccessible to employees and clients. The claimant was aware that he was not to be drinking while on call but chose to do so anyway. This is more than a mere case of bad judgment. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of August 16, 2010, reference 01, is affirmed. Jason Sparrow is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css