

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON C DENNY

Claimant

**DSM HEALTHCARE MANAGEMENT
GENESIS SENIOR LIVING CENTER**

Employer

APPEAL NO: 13A-UI-01217-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/30/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 25, 2013, reference 01, that held he was discharged for misconduct on December 24, 2012, and benefits are denied. A telephone hearing was held on March 4, 2013. The claimant participated. Kim Mathis, Business Office Manager, and Vicki Underwood, Dietary Manager, participated for the employer. Claimant Exhibits A, B and C was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on August 23, 2012, and last worked for the employer as a full-time head cook in the dietary department on December 24. Claimant received the employer policy in an employee handbook.

During the course of employment, the employer issued claimant written disciplines for a late call absence (August 27), food policy serving violations (September 17), failure to record clean sheets (October) and other violations (November 17). The discipline does state that further violations might result in termination.

On December 21 a nurse told the business office manager that claimant had been on the phone for a lengthy period. The manager confirmed it with further observation. She later confronted claimant about serving dining trays before residents were present. These observations were communicated to the administrator. She was aware of the prior discipline and directed the dietary manager to terminate claimant when he next reported to work.

The dietary manager presented claimant with a written termination on December 28 for his actions on December 21 in light of the prior discipline. Claimant refused to sign for it because he disagreed. He failed to let the employer know the reason for his extended personal call with

his companion on the employer work phone. He also disagrees with serving food trays before residents were prepared to eat.

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 administrative law judge concludes the employer has established claimant was discharged for misconduct in connection with employment on December 28, 2012.

Although claimant had not been suspended, the employer had issued him several written disciplines for a variety of policy violations that occurred during a brief period of employment. While the recent incident(s) on December 21 are not so serious as to merit job disqualifying misconduct, they are when considering the prior disciplinary history.

DECISION:

The department decision dated January 25, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on December 24, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll