

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANIEL DARLINGTON
Claimant

APPEAL NO. 06A-UI-11174-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HILLCREST FAMILY SERVICES
Employer

**OC: 10/22/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nathaniel Darlington (claimant) appealed an unemployment insurance decision dated November 17, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Hillcrest Family Services (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 6, 2006. The claimant participated in the hearing with John Rosenthal, Vice-President and Business Agent for Teamsters Local 421. The employer participated through Julie Heiderscheit, Director of Human Resources. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time youth care worker from September 13, 2005 through October 5, 2006, when he was discharged for assaulting a resident. The employer deals with adolescents with behavioral problems, so it is not uncommon to be faced with an aggressive individual. On September 27, 2006, the claimant was working with a combative male child and was trying to take him to the seclusion room. Two other staff members were assisting the claimant in trying to accomplish this but the claimant was the only individual with the resident from the beginning of the incident to the end. One other staff member was present when the claimant kicked the resident once in his ribs. All staff members are mandatory reporters, which means they are required to report abuse but they have 48 hours in which to do so. The claimant's co-worker reported nothing that night but a different staff member discovered a bruise on the resident's ribs on the following day. An investigation was conducted and the co-worker admitted seeing the claimant kick the resident. The claimant denied kicking the resident, but the employer's investigation confirmed the claimant had kicked the resident and he was discharged on October 5, 2006. The employer was required to report

the incident to the Iowa Department of Human Services, who conducted its own investigation and determined the allegation of an assault was founded. The matter was turned over to the police but no charges have been filed as of yet.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for assaulting a male resident by kicking that resident in the ribs. The resident confirms he was kicked by the claimant and a co-worker witnessed the assault. There were no problems between the claimant and this particular co-worker, so there appears to be no reason for fabrication. The claimant denies all wrongdoing and claims that the subsequent founded report of abuse was based on a shoddy investigation because Human Services did not interview all parties. There was one party that was not interviewed, but she was not present at the time of the assault. The employer's determination to discharge the claimant was not based on the conclusions of the

Iowa Department of Human Services. However, the subsequent founded report of abuse based on an independent investigation tends to corroborate the employer's evidence. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 17, 2006, 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 been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw