

**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**

**Appeal Number: 05A-UI-03003-DT
OC: 02/13/05 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.

**TROY WILSON
1075 – 26TH APT 2
DES MOINES IA 50311**

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.

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

**MICHELLE MACKEL-WIEDERANDERS
ATTORNEY AT LAW
1111 – 9TH ST STE 230
DES MOINES IA 50314**

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Troy Wilson (claimant) appealed a representative's March 14, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Mercy Hospital (employer). Hearing notices were mailed to the parties' last known addresses of record for a telephone hearing to be held on April 11, 2005. The employer received the hearing notice and responded on March 30, 2005 by sending the Appeals Section a letter indicating that the employer would not be available at the scheduled time; however, rather than seeking to have the hearing rescheduled, the employer submitted documentary information which it requested the administrative law judge to consider in lieu of the employer's participation. Therefore, the employer did not participate in the hearing. The claimant received the hearing notice and responded by arranging for representation by Ms. Mackel-Wiederanders, attorney at law, whose office contacted the Appeals Section to indicate that the administrative law judge could contact her and the claimant at her office at the scheduled time for the hearing. However, when the

administrative law judge called for the hearing, while Ms. Mackel-Wiederanders was present and available for the hearing, the claimant was not present or available. Therefore, the claimant did not participate in the hearing. Over Ms. Mackel-Wiederanders' objection, the employer's submission was admitted to the record as Employer's Exhibit One under the administrative law judge responsibility to inquire into the factual matters at issue and receive physical evidence is material and relevant, particularly in light of the failure of either party to participate in the hearing in order to provide the administrative law judge with a source of first-hand information. 871 IAC 26.14(2). For the same reason, administrative notice is made of the contents of the administrative file. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 30, 2000. He worked full time as maintenance worker at the employer's medical facility. The employer discharged him on February 16, 2005. The stated reason for the discharge was repeated violation of the employer's policies and expectations. The final incident occurred on February 2, 2005. On that date, the employer was unable to contact the claimant on his radio or pager or physically locate him within the facility for approximately an hour. He had forgotten his pager and his radio battery was dead, but when asked where he was for the hour, he could not answer.

When the claimant did report, his manager observed physical phenomena of physical impairment including an unsteady gait and slow response time. He was taken to the employee clinic for evaluation. He acknowledged taking a nighttime cold medicine with an alcohol base prior to reporting for work. The employer considered that claimant to be in a "safety sensitive position" and therefore in violation of the employer's policy prohibiting employees in safety sensitive positions from working while taking medications that may cause physical or mental impairment. The claimant was sent home that day and remained home sick the rest of the week.

On February 7, 2005, the claimant sought to return to work. He was given a disciplinary notice for a late-reported absence that had occurred on February 1, 2005, and was sent home on suspension. The suspension was continued during the employer's investigation of the February 2, 2005 incident until the claimant's discharge on February 16, 2005.

The claimant had previously received warnings for other disciplinary issues.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

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).

The claimant's failure to be reachable or accountable for the hour on February 2 and his reporting to work while impaired by medication shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's March 14, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of February 2, 2005. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

ld/sc