

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEODIS F ANDERSON

Claimant

APPEAL NO: 06A-09175-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTER OF ALCOHOL/DRUG

SERVICES INC

Employer

**OC: 08/20/06 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Leodis Anderson, filed an appeal from a decision dated September 11, 2006, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 27, 2006. The claimant participated on his own behalf. The employer, Center of Alcohol/Drug Services, Inc. (CADS), participated by Executive Director Carolyn Ross and Clinical Director Joe Cowley. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

Leodis Anderson was employed by CADS from December 22, 2000 until August 21, 2006. He was a full-time residential technician for the facility which treats alcohol and drug dependence. During the course of his employment the claimant received a copy of the employer's policies and standards of conduct, which set out the expectations for employees and the disciplinary consequences for any violations.

On August 20, 2006, the claimant struck a client. The client had been engaging in what he considered to be "horseplay" when he kicked Mr. Anderson in the leg. A few minutes later the claimant was gathering up the razors used by the clients, as required, when the client struck the razor out of his hand. Mr. Anderson ordered the client to pick it up and when he bent over to do so, the claimant struck him with a closed fist behind his left ear.

The claimant attempted to contact a supervisor about the incident but when he did not get an answer, he did not call the emergency number or follow the chain of command as required. The emergency numbers and other phone numbers are posted. Eventually, Supervisor Darrell Vincent called the facility and Mr. Anderson reported the incident to him. Mr. Vincent contacted

Clinical Director Joe Cowley and Executive Director Carolyn Ross, who ordered the claimant to be sent home pending an investigation and meeting.

The meeting was held on August 21, 2006, at which time the claimant again admitted to striking the resident, declaring it to be "horseplay" just as the resident had said when he kicked him shortly before. The employer considered this to be a violation of the standards of conduct and an abuse of residents, and Mr. Anderson was discharged.

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 was discharged for striking a resident. Although he maintained it was a "reaction" to being kicked by the resident, he admitted he struck the resident two or three minutes after the kicking. This is not a reaction but retaliation. While the administrative law judge accepts that working with such clients can be very difficult and trying, it does not give the claimant permission to physically abuse them. The judge cannot accept that striking someone behind the ear as they bend over to pick up something constitutes "horseplay" in any sense of the word.

The claimant apparently lost his temper and retaliated against the client. The employer's obligation is to provide care for the residents and Mr. Anderson's conduct clearly violated not only the client's rights but his safety and the best interests of the employer. He is disqualified.

DECISION:

The representative's decision of September 11, 2006, reference 01, is affirmed. Leodis Anderson 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/kjw