

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN ODAYE
Claimant

APPEAL NO. 13A-UCFE-00036-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VA CENTRAL IA HEALTH 05
Employer

OC: 09/01/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the September 30, 2013, (reference 02) unemployment insurance decision that allowed benefits. After due notice was issued, a hearing was held on October 25, 2013. Claimant participated. Employer did participate through Greg Smith, Human Resources Representative.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a housekeeping aide beginning on March 20, 2005 through October 18, 2013 when he was discharged. On May 30, 2013 the claimant was seen cleaning in a room that was marked for isolation and he was not wearing the proper personal protective equipment. The employer learned of the incident on May 30, 2013 but took until October 18, 2013 to discharge the claimant. The employer was just very busy with human resources issues at that time and did not get to the claimant's infraction until almost five months after it occurred. While the employer has a specific policy they are required to follow in making the decision to discharge, the delay came not from the policy but from how busy Mr. Smith was.

From August 29 through September 28 the claimant was suspended for taking money from a patient. He was allowed to return to work after his suspension for almost a month before the employer acted on the May 30, 2013 incident. The claimant should not have been working in the isolation room without personal protective equipment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(8) provides: Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past act or acts. The termination of employment must be based upon a current act. A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." *Greene v. EAB*, 426 N.W.2d 659 (Iowa 1988).

The employer had ample opportunity to deal with the May 30 incident well before the claimant's eventual discharge on October 18 but simply did not do so. Even if the administrative law judge were to find that the claimant committed misconduct on May 30, after a suspension and the passage of almost five months, the administrative law judge cannot conclude that he was discharged for a current act of misconduct. Thus, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The September 30, 2013, (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css