

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN D WILLIAMSON

Claimant

DIAMOND JO WORTH LLC

Employer

APPEAL NO: 13A-UI-04289-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/17/13

Claimant: Appellant (2)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated April 5, 2013, reference 01, that held he was discharged for misconduct on March 11, 2013, and benefits are denied. A telephone hearing was held on May 15, 2013. The claimant, and Attorney, Katherine Evans, participated. Nancy Vine, HR Director, participated for the employer.

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 September 6, 2011, and last worked for the employer as a full-time maintenance technician on March 11, 2013. The claimant's supervisor met with him in the maintenance office to discuss job performance issues.

Claimant became confrontational with profanity in response to the issues. He got up, moved a laundry cart in his way, and left. In the employee locker room he took off his tool belt and banged against a locker.

The HR director suspended claimant for behavior on March 11. When claimant stated he suffered from an emotional illness (bi-polar disorder), he was provided medical forms to verify the condition and let the employer know if there should be a work place accommodation should it return him to employment.

Claimant remained in contact with employer about the paperwork and seeing a healthcare provider for condition diagnosis verification but was unable to do so. The employer changed the suspension to discharge on May 1 for claimant's failure to establish a health issue disability.

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.

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.

The administrative law judge concludes the employer has failed to establish claimant was suspended on March 11, 2013 and discharged for misconduct in connection with employment on May 1, 2013.

While claimant displayed inappropriate behavior during and after his supervisor meeting on March 11, it does not rise to the level of job disqualifying misconduct. The employer changed the suspension to discharge on May 1 based on claimant's failure to provide medical documentation of his emotional illness. It never provided claimant with a deadline to provide it and any warning if he failed to do so it would result in employment termination. Job disqualifying misconduct is not established based on any current act of misconduct.

DECISION:

The department decision dated April 5, 2013, reference 01, is reversed. The claimant was not suspended on March 11, 2013 nor was he discharged for misconduct on May 1. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll