

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE DAVENPORT
Claimant

APPEAL NO: 06A-UI-10109-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENNIE EDMUNDSON MEMORIAL HOSP
Employer

OC: 09/24/06 R: 01
Claimant: Appellant (5)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Lance Davenport (claimant) appealed an unemployment insurance decision dated October 16, 2006, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Jennie Edmundson Memorial Hospital (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2006. The claimant participated in the hearing. The employer participated through David Paul, Supervisor of Environmental Services and Kathy Heuwinkel, Benefits Specialist. 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-connected misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time cleaning technician from March 29, 2004 through September 22, 2006. He was discharged from employment due to attendance and receipt of two written warnings within two days. Employees are discharged if they receive two written warnings within a three-month period. The employer's attendance policy provides for a documented discussion if an employee has three occurrences within a three-month period. The next step is a written warning and the final step is a written warning with a zero day suspension and year of probation. After the final warning, an employee will be discharged if he or she has three additional absences within three months. Each warning has an active period of one year.

The claimant received a documented discussion on May 20, 2005 and a written warning on March 6, 2006. He was scheduled to receive a zero day suspension and probation on September 20, 2006 for six previous absences but did not report to work that day. He called in minutes before his shift was scheduled to begin and stated he would not be at work because he had to work on his furnace. Employees are required to report absences at least one hour

before the beginning of their shift. The claimant had taken a co-worker to work earlier that day but did not say anything to the employer at that time. He was going to receive a written warning for his failure to properly report his absence but was then a no-call/no-show on September 21, 2006. The no-call/no-show also resulted in a written warning, which prompted his immediate discharge. A letter of termination was sent to him on September 22, 2006.

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.

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 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 per the employer's progressive disciplinary policy for two policy violations associated with attendance. He

contends he did not call or report to work on September 21, 2006 because he thought he had been fired. However, the employer never told him he was fired and never discussed termination with him when he called in his absence the day before. The claimant's violation of known work rules 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 October 16, 2006, reference 01, is modified with no effect. 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/pjs