

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH A NELSON**  
Claimant

**APPEAL NO. 14A-UI-01385-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COOPLIN INC**  
Employer

**OC: 01/12/14**  
**Claimant: Respondent (1-R)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The employer, Cooplin, filed an appeal from a decision dated February 3, 2014, reference 01. The decision allowed benefits to the claimant, Joseph. After due notice was issued a hearing was held by telephone conference call on February 27, 2014. The claimant participated on his own behalf and with Dawn Nelson. The employer participated by Co-Owner Amber Lindsay.

**ISSUE:**

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

**FINDINGS OF FACT:**

Joseph Nelson was employed by Cooplin from June 25, 2012 until December 16, 2013 as a full-time cook. He suffers from bi-polar disorder and sometimes was not on his medication and sometimes the medications were not effective. The employer was aware of this and had on some occasions, advanced him money for his prescriptions.

He was prone to erratic behavior and was suspended in March and November 2013, because of throwing pots and utensils and getting out of control. He was given a final written warning on December 2, 2013, which notified him if he had any further incidents he would be discharged.

On December 15, 2013, he was again displaying erratic behavior, his work was not done, he was “walking around in circles” and throwing utensils and butter tubs. He told Co-Owner Bridget Cooper to keep Ms. Lindsay “out of [his] arm’s reach.” He was sent home.

The next day he came back in with his mother. He had been off his medications because the paperwork for his government-funded therapy had gotten mixed up and he was not able to get the prescriptions refilled because he could not get in to see his therapist. He was still erratic and Co-Owner Bridget Cooper discharged him.

The issue of whether the claimant is able and available for work given his unstable medical condition has not been determined.

## 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.

Misconduct denotes a volitional act or negligence of such a degree as to be considered volitional. The employer was aware the claimant suffered mental illness and did not always have rational control of his conduct. The employer accepted this for 18 months and the administrative law judge concludes they acquiesced in the situation. To suddenly fault the claimant for behavior over which he had no control does not constitute misconduct on his part.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, 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 misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The evidence indicates the claimant was discharged for erratic behavior which was beyond his control. While the employer had every right to be concerned about its business and other employees in light of the situation, it does not rise to the level of willful misconduct and disqualification may not be imposed.

The issue of whether the claimant is able and available for work should be remanded for determination.

**DECISION:**

The unemployment insurance decision dated February 3, 2014, reference 01, is affirmed. Joseph Nelson is qualified for benefits, provided he is otherwise eligible.

The matter of whether the claimant is able and available for work given his unstable medical condition is remanded to the Agency.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs