

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAMONT F JEFFRIES
Claimant

APPEAL NO. 19A-UI-02739-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRK WILLIAMS INC
Employer

OC: 02/17/19
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

PRK Williams (employer) appealed a representative's March 25, 2019, decision (reference 01) that concluded Lamont Jeffries (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 18, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Gina Carson, Corporate Director. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on January 30, 2018, as a full-time human services supervisor. He signed for receipt of the employer's policies and job description on January 30, 31, and September 11, 2018.

On November 7, 2018, the employer issued the claimant a final written warning for not using good judgment. The claimant collected a member from work who had been given the wrong medication. The claimant called the staff person who gave the incorrect dosage and reported the situation. He left the first member unattended and took another member to a doctor's appointment. The employer thought the claimant should have reported the incident to a supervisor immediately, sought medical attention for the first member, and instructed the first member to complete an incident report. The employer placed the claimant on a thirty-day probation and notified him that further infractions could result in termination from employment. His thirty-day probation expired on December 6, 2018.

On November 22, 2019, the employer issued the claimant a written warning for leaving a member unattended. The employer demoted the claimant to direct support professional and notified him that further infractions could result in termination from employment.

On an unknown date a member reported that he saw the claimant and another member involved in horseplay and a door was damaged. The claimant called a member "punk ass" on an unknown date. The employer terminated the claimant for violation of the Code of Conduct Policy and Procedure, treating members with dignity and respect.

The claimant filed for unemployment insurance benefits with an effective date of February 17, 2019. He received no unemployment insurance benefits after his separation from employment. The employer provided the name and number of Lori Bryant as the person who would participate in the fact-finding interview on March 12, 2019. The fact finder called Ms. Bryant but she was not available. The fact finder disconnected after being left on hold for over three minutes. The fact finder sent the employer a letter asking for a response by March 18, 2019. The employer made no response. The employer did not respond to the letter. The employer provided no documents for the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(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 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 employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The employer was unable to provide the date of the final incident, whether an investigation was conducted or if anyone was questioned. The claimant was discharged on January 18, 2019. Without information about the date of the final incident, a decision cannot be made that the separation was founded on a current act. The employer has failed to provide any evidence of willful and deliberate misconduct which was the final incident leading to the discharge and disqualification may not be imposed.

DECISION:

The representative's March 25, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs