

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RICHARD A MOSHER
Claimant

STORY COUNTY
Employer

APPEAL NO. 14A-UI-05114-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/13/14
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 8, 2014, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 7, 2014. Claimant participated personally. Employer participated by Jessica Reynolds, Story County Attorney with witnesses Ron Christensen, Community Life Program Director and Michelle VanMaaren, Residential and Medical Service Manager.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 14, 2014.

Employer discharged claimant on March 14, 2014 because claimant was not cleaning to the employer's satisfaction. Employer instructed claimant to clean better. Claimant was cleaning the home to the best of his ability. Claimant did clean adequately on March 10, the date of the last alleged cleaning incident. Claimant's sworn testimony is more credible than the hearsay offered by employer. Employer also let claimant go because he did not take a first aid class. Claimant had six classes to choose from. Claimant repeatedly asked employer to tell him which of the six classes he needed to take. Employer did not specify the class to take. Employer did warn claimant that cleaning and lack of first aid classes would result in discharge. Employer issued claimant a final warning.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in

disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning cleaning and first aid training. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer failed to prove that claimant's cleaning was inadequate. A general allegation that claimant did not clean properly is insufficient. The lack of first aid training is not misconduct because employer did not inform claimant he would lose his job if he did not finish the class. The failure to warn claimant detracts from a finding of intentional conduct. The failure to specify which first aid class to take also detracts from a finding of misconduct. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated May 8, 2014, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs