

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHAD T WEST**  
Claimant

**APPEAL NO. 17A-UI-12000-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 10/29/17**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Chad West (employer) appealed a representative's November 17, 2017, decision (reference 01) that concluded Chad West (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 December 13, 2017. The claimant participated personally. The employer participated by Theresa McLaughlin, Director of Human Resources, and Ryan Fasbender, Market Manager. 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 June 16, 2008, as a full-time market clerk. The claimant signed for receipt of the employer's handbook on July 11, 2016. The handbook states that employees may be terminated for irregular attendance or lack of attention to duty. The handbook does not describe "attention to duty".

On March 27, 2017, the employer issued the claimant a written warning for attendance. The warning did not list the dates of absences in the warning. The employer notified the claimant that further infractions could result in termination from employment. The claimant was absent on January 23, February 10, and 15, 2017, for medical-related conditions. The employer recorded the claimant tardy for work on March 3 and 10, 2017, but the claimant denies the employer's allegations.

From June 2 to July 2, 2017, the claimant was hospitalized. After his hospitalization, he was in treatment until August 15, 2017. He returned to work in September 2017.

On September 22, 2017, the employer issued the claimant a written warning and three-day suspension because the claimant was unfit for duty on May 3, 2017. On October 12, 2017, the employer issued the claimant a written warning for lack of attention to duty on October 11, 2017. The claimant made some mistakes at work which were caused by the claimant's medications. The employer notified the claimant each time that further infractions could result in termination from employment.

The employer hired five new part-time workers in the fall of 2017 and scheduled them all to work with the claimant on October 21, 2017. The claimant had never had so many new workers to supervise in one shift. At least two of the workers did not know where the break room was located. The claimant did his best with the workers he was provided. On October 23, 2017, the market manager talked with the claimant. They made a list of the jobs that were not completed on October 21, 2017, and both signed the list. No warning was embodied in the list.

On October 31, 2017, the claimant was arrested in Clear Lake, Iowa, and charged with a simple misdemeanor, violating a no contact order through a third party. The claimant pled not guilty on November 1, 2017, and immediately thereafter called the employer about his November 1, 2017, shift. He gave the employer two hours' notice of his absence on November 1, 2017. The employer told the claimant to appear on November 2, 2017, at 2:00 p.m. He is next scheduled to appear in court on February 26, 2018. On November 2, 2017, the claimant appeared and the employer terminated him for lack of attention to duty.

The claimant filed for unemployment insurance benefits with an effective date of October 29, 2017. The employer participated personally at the fact finding interview on November 16, 2017, by Maggie Worrell.

#### **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).

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 indicates that the claimant's final incident lack of attention to duty was on November 1, 2017. On that day the claimant reported his absence two hours in advance of the start of his shift. The employer told him to appear on November 2, 2017. The claimant did not appear for work on November 1, 2017, because he was prohibited from doing so by an arrest on a charge that he has not pled guilty to or been found guilty of. To the best of his ability, the claimant performed his duty to the employer by properly reporting his absence. It is unknown what other duty the claimant could have performed under the circumstances. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 17, 2017, 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