

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN A STECKELBERG**  
Claimant

**MID-STEP SERVICES INC**  
Employer

**APPEAL NO. 09A-UI-17445-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/18/09**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The claimant appealed a department representative's decision dated November 17, 2009, reference 02, that held he was discharged for misconduct on October 15, 2009, and benefits are denied. A telephone hearing was held on December 31, 2009. The claimant participated. Jan Hackett, HR Director, participated for the employer.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant began full-time employment as a residential living assistant on December 8, 2008, and last worked on October 15, 2009.

During the course of employment, the claimant received written warnings and suspensions for excessive absenteeism, and misuse of his personal cell phone. The claimant was issued a written warning on April 12, 2009, for leaving a resident unattended for forty-five minutes on a toilet. The claimant and one other assistant were supervising five consumer/residents at a work center location on October 15 when the claimant received a telephone call for him to come home. The claimant left work without seeking permission from a supervisor according to employer policy, and failed to provide care for the resident he was attending. When the claimant got home, he perceived that his daughter was alright, and did not require any medical care. When the claimant contacted administration, he learned that he was discharged for leaving work without permission.

## 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.

871 IAC 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 administrative law judge concludes that the employer established misconduct in the discharge of the claimant on October 15, 2009, for a current act of misconduct in leaving work without permission and proper resident care in light of prior discipline.

The claimant did not leave work with employer permission for any family emergency or good cause, and the personal reason for his leaving did not outweigh the employer's need for him to provide care for the resident(s) he was supervising. The claimant committed misconduct in leaving for violating the employer policy and his adverse pattern of behavior due to prior warnings constitutes job disqualifying misconduct.

**DECISION:**

The decision of the representative dated November 17, 2009, reference 02, is affirmed. The claimant was discharged for misconduct in connection with employment on October 15, 2009. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs