

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS MURRAY**  
Claimant

**APPEAL NO: 08A-UI-05313-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ARAMARK SPORTS LLC**  
Employer

**OC: 05-04-08 R: 01  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 27, 2008, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 17, 2008. The claimant participated in the hearing. Robert Bowman, General Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time director of operations for Aramark Sports from August 6, 2007 to April 25, 2008. On December 8, 2007, the claimant received a written warning for violation of the employer's attendance policy and PTO policy and was suspended for five days with pay. He was also warned that any further absences could result in termination and all absences must be reported to General Manager Robert Bowman. On April 22, 2008, the claimant was scheduled to work but had a personal commitment and on April 20, 2008, he asked Jim Donnelly, whom he believed to be the manager, if he could leave early because of a private, family gathering in Kansas City. Mr. Bowman was not there at the time. Mr. Donnelly agreed to work for the claimant but was not there before the claimant had to leave and the claimant left as planned. Mr. Donnelly failed to work for the claimant and when the claimant returned to work his employment was terminated.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The claimant's actions April 22, 2008, were the result of a miscommunication with Mr. Donnelly and as such were an isolated incident of misconduct which does not rise to the level of disqualifying job misconduct as defined by Iowa law. The employer has not met its burden of proof in this case. Therefore, work-connected misconduct has not been established. Benefits are allowed.

**DECISION:**

The May 27, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs