

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREG F RINDER
Claimant

APPEAL NO. 10A-UI-11921-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA JEWISH SENIOR LIFE CENTER
Employer

**OC: 04/25/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Greg Rinder (claimant) appealed a representative's August 18, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Iowa Jewish Senior Life Center (employer) for failure to perform satisfactory work of which he was capable. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for September 28, 2010, in Des Moines, Iowa. The claimant participated personally. The employer participated by Darlene Perdue, Dietary Director. The employer offered and Exhibit One 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 July 12, 2010, as a full-time evening cook. The claimant signed for receipt of the employer's handbook on July 12, 2010. The employer did not issue the claimant any warnings during his employment.

The claimant was required to perform dietary aide work in addition to cooking. During his five-day training period the claimant could not perform all the dietary aide work and the cooking in the time allotted. After working for three or four days the claimant told the employer that he did not feel physically capable of performing all the work in the time allotted. He asked the employer if it would be willing to let him go. The employer refused. The claimant never cooked anything during his training and was never able to get the work done in the time allowed.

On July 19, 2010, the claimant was supposed to handle his shift without help. The dietary director agreed to stay through the claimant's shift. The dietary director told the claimant to start the hamburgers. The claimant did not hear her and continued to prepare garnishes. Five minutes later the dietary director started preparing the hamburgers. The two discussed the fact that the claimant had never prepared hamburgers in that manner. The dietary director dished

up fruit, cooked the hamburgers and French fries. The claimant mopped but the dietary director thought the floor was too wet. On July 20, 2010, the employer terminated the claimant.

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:

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of his lack of training and quantity of work. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's August 18, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css