

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIP HOWELL
Claimant

APPEAL NO: 10A-UI-12493-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 08-31-10
Claimant: Respondent (2)

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 31, 2010, 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 October 26, 2010. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 CNA for Care Initiatives from February 22, 2010 to June 18, 2010. He worked the 2:00 p.m. to 10:00 p.m. shift. He received a verbal warning for a type C violation April 12, 2010, for horseplay in the hall, failure to take care of residents and inappropriate conversation on a walkie-talkie. On June 16, 2010, the claimant called the employer at 1:15 p.m. and said he hurt his back at work June 15, 2010, and was unable to work June 16, 2010. He confirmed he had not made an incident report regarding his alleged injury prior to the end of his shift nor had he notified his supervisor about the incident but could not provide an explanation for failing to do so. The claimant received a type C violation for failing to call in at least two hours prior to his shift and a type B violation for failing to complete an incident report. Because the claimant received the type C violation in April 2010, that, in combination with the type B and type C violations June 15 and 16, 2010, resulted in the claimant's termination of employment June 18, 2010.

The claimant has claimed two weeks of benefits but reported wages greater than his weekly benefit amount for those two weeks and consequently has not received unemployment insurance benefits since his separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for disqualifying job 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant accumulated three policy violations in just over two months while working for the employer. Under the employer's policy an employee may be discharged when receiving three warnings within a rolling calendar year. The claimant received an employee handbook and knew, or should have known, he was required to report his absences at least two hours prior to the start of his shift and that he needed to file an incident report or at least tell his supervisor if ever injured at work, none of which the claimant did June 15 and June 16, 2010. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The August 31, 2010, reference 01, decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant has not received unemployment insurance benefits and consequently is not overpaid benefits.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs