

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASEY HEPKER

Claimant

APPEAL NO: 12A-UI-05356-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAMES SCHNEIDER INC

Employer

OC: 04/01/12

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 25, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 31, 2012. The claimant participated in the hearing with Attorney Steven Stefani. James Schneider, Owner and Alanza Lake-Herrera, Funeral Director, 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 apprentice funeral director and embalmer for Hoffmann Schneider Funeral Home from April 5, 2011 to April 2, 2012. On Friday, March 9, 2012, the claimant volunteered to come back that evening and help clean up and close the funeral following a large wake. Funeral Director Alanza Lake-Herrera offered to do it but the claimant stated he would do it. Ms. Lake-Herrera called the funeral home toward the end of the wake and another employee answered the phone. Ms. Lake-Herrera asked if the claimant was there and was told he had not returned yet. Ms. Lake-Herrera waited 30 minutes and called again and was told the claimant still was not there so she went in to help with the clean up and closing of the funeral home for the night. At approximately 10:00 p.m. she called the claimant on the speakerphone with another employee present and asked why he did not come back and the claimant stated he forgot. On Friday, March 30, 2012, the employer told the claimant he was responsible for a visitation that evening. Around noon the claimant said he was going home because his son was vomiting and his daughter was running a slight fever. The employer reminded him he had visitation duty that night and to let him know what was going on. The claimant did not call or show up for the visitation and the employer was forced to cancel his other engagement and work that evening. The employer also described other situations where the claimant would wait until most of the work following a visitation at night was done before calling to see if they needed his help (no dates provided). Between the March 9 and March 30, 2012, situations the employer had a discussion with the claimant and told him that if he could

not be more responsible and engaged in his job the employer would not be able to continue his apprenticeship as long-term employment and he could not continue to work for the employer. The employer terminated the claimant's employment April 2, 2012, after the March 9 and March 30, 2012, incidents.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related 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.

While the claimant cites lack of childcare as the reason he was unable to work March 9 and March 30, 2012, that is not considered a good cause reason for absenteeism. The claimant was aware at the time of hire he was a salaried employee and would be required to be on-call and work some evenings when visitations were held and it was his responsibility to have childcare and backup childcare available. He volunteered to work March 9, 2012, but failed to call or show up and when called told Ms. Lake-Herrera he "forgot" he was supposed to come in that night. He indicated he called a pre-need sales person March 30, 2012, and asked him to work for him that evening but the employer denies that he called at all. Also questionable is the fact that both of these incidents occurred on Friday nights. Although the employer did not issue written warnings to the claimant he did talk to him and stated his job was in jeopardy. 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 must be denied.

DECISION:

The April 25, 2012, reference 01, decision is affirmed. 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css