

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES E THOMPSON**

Claimant

**APPEAL NO: 13A-UI-01960-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EVANGELICAL RETIREMENT HOMES INC**

Employer

**OC: 01/06/13**

**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated February 6, 2013, reference 01, that held he was discharged for misconduct on January 6, 2013, and benefits are denied. A hearing was held in Des Moines, Iowa on April 30, 2013. The claimant, Melissa Thompson, witness, and Attorney, Robert Tucker, participated. Katie Graham, Attorney, Gene Doss, Environmental Director, and Shelly Barryhill, Business Director, participated for the employer. Claimant (Complainant) Exhibits One through Four was received as evidence. Employer (Defendant) Exhibits One through Seven was also received.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on October 5, 2009, and last worked for the employer as a full-time maintenance employee on January 9, 2013. He signed for the receipt of the employee handbook that contains employer policy. Insubordination is a termination offense. The policy also provides attendance provisions. The first day of absence is not excused but subsequent days after that are. Claimant also received a written job description. Claimant had an immediate supervisor who reported to the environmental director.

The employer had an issue with claimant's attendance to the point he was given a notice of disciplinary action on October 24, 2012. The employer listed dated absences with a violation detail "Have been sick or left early sick too many times next violation in 90 days will result in two day suspension". The next violation action is listed as suspension.

Claimant perceived that the environmental director was against him in his employment, and he created a very uncomfortable work atmosphere. He recently became ill on the job in early January and he was given permission to leave work early. He returned to work with a doctor release on January 5, 2013.

Claimant reported to work late about 15 minutes on January 9, 2013 and went in to the environmental director office with a belief he would be disciplined for it. The director was contemplating an attendance suspension or final warning for the late to work. Claimant began yelling at the director stating he had no respect (for him); he would not work for him, and would not do anything he said. At least one employee was near enough to overhear the claimant statement.

The director terminated claimant for insubordination. He felt threatened by the yelling, believed claimant was hurting his ability to effectively manage, and he was refusing future work direction from him.

## **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.

The administrative law judge concludes employer has established claimant was discharged for misconduct in connection with employment on January 9, 2013.

Although claimant was not discharged for any attendance policy violation, he went into the director's office with knowledge of pending discipline and an attitude of disrespect for him based on prior discipline. He voiced that disrespect in a loud tone before the discipline was announced to the point that another office worker overheard it. He compounded the disrespect by telling the director he would not do anything he said because he would not work for him.

While the employer attendance policy is not the reason for the employment termination, claimant allowed his contempt with it to spill over against his director. He offered no excuse for being late the morning of January 9 and he knew he was subject to suspension or final warning going into the director's office for that incident in light of the prior warning.

While claimant did not directly disobey a supervisor work instruction, he announced his disrespect for the director with a statement he would not work for him that constitutes insubordination and job disqualifying misconduct. The incident is made more serious by claimant's loud voice that caused it to be overheard by an office worker with a reasonable inference that the incident could reasonably affect the director's future employee management.

**DECISION:**

The department decision dated February 6, 2013, reference 01, is affirmed. The claimant was discharged for misconduct on January 9, 2013. 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

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