

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROB B REED
Claimant

APPEAL NO. 13A-UI-04116-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROVISIONS INC
Employer

OC: 03/03/13
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Midwest Provisions, filed an appeal from a decision dated March 27, 2013, reference 01. The decision allowed benefits to the claimant, Rob Reed. After due notice was issued, a hearing was held by telephone conference call on May 13, 2013. The claimant participated on his own behalf. The employer participated by District Manager Sherry Bathke.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Rob Reed was employed by Midwest Provisions from August 13, 2012 until March 6, 2013 as a full-time afternoon assistant cook. He had received one written warning February 11, 2013, for being no-call/no-show to work and it advised him his job was in jeopardy if it happened again.

Mr. Reed was scheduled to work March 2, 3, and 4, 2013, but did not come to work. He called his manager, Chuck Webber, on March 2, 2013, to say he had to go to out of town as his sister had died. On Monday, March 4, 2013, he called again to say the funeral would be the next day and he would return to work on Wednesday, March 6, 2013.

When he arrived at work as agreed Manager Vicki Yokum told him he was fired for being no-call/no-show for three days. He asserted he had reported to Mr. Webber and this was verified. The manager still discharged 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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In the present case the employer did not present evidence or testimony from either Mr. Webber or Ms. Yokum to confirm or rebut the claimant's testimony. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of March 27, 2013, reference 01, is affirmed. Rob Reed is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css