

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MOSES N MENEGBO
721 ARTHUR AVE
DES MOINES IA 50316**

**BEHAVIORAL TECHNOLOGIES CORP
2601 E UNIVERSITY
DES MOINES IA 50317**

**Appeal Number: 04A-UI-02630-H2T
OC 02-01-04 R 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Suspension/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 3, 2004, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 31, 2004. The claimant did participate. The employer did participate through Virginia Bradish, Director.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a developmental specialist full-time beginning February 7, 2000 through January 3, 2004 when he was suspended indefinitely while the Iowa Department of Inspections and Appeals conducted an investigation into an allegation that the claimant allegedly bit a client. A client accused the claimant of biting her on January 3, 2004. The

claimant indicated that he did not bite the client. The claimant was then suspended while an investigation was conducted. The employer provided no corroborating evidence that the claimant committed any misconduct on January 3, 2004. No other person other than the alleged victim witnessed the claimant allegedly biting the client. The employer admits that the client can be aggressive and self-abusive.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was suspended from employment for no disqualifying reason.

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(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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 claimant was accused of biting a client of the employer's. The claimant denies ever biting or mistreating a client. The employer has provided no proof that the claimant ever committed misconduct. A mere allegation is not the equivalent of proving an allegation of misconduct. Since the employer has failed to establish misconduct, benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 3, 2004, reference 01, decision is reversed. The claimant was suspended from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/d