

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY C VAN FLEET
Claimant

APPEAL NO. 10A-UI-04154-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

**Original Claim: 02/14/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(5) – Trial Period of Employment/Probation

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated March 8, 2010, reference 01, that he was discharged for misconduct on February 11, 2010, and that denied benefits. A hearing was held on April 29, 2010. The claimant participated. Jim Rotter, Director of Business Services, participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant did some substitute work in May 2009. The claimant was hired as a full-time custodian on August 31, 2009, on a 90-day probationary period. The claimant's probation was extended due to an unsatisfactory job performance review in October 2009. Before the extension period was to begin, the claimant suffered a non-job-related injury and was off work until late January 2010. After about ten days, the claimant was discharged for an unsatisfactory job performance during a probationary period of employment on February 11, 2010.

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(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on February 11, 2010, because a failure to satisfy a probationary period of employment is not job disqualifying misconduct. The employer offered no documentation to establish misconduct.

The claimant claimant's probation was extended due to an unsatisfactory performance review; but before it went into effect, the claimant was off work for more than two months due to a non-job-related injury. The claimant worked only a brief period of time after his return to work prior to discharge, which supports a reasonable inference he failed to satisfy probation (trial period of employment), which is not misconduct.

DECISION:

The representative's decision dated March 8, 2010 reference 01 is reversed. The claimant was not discharged for misconduct in connection with employment on February 11, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw