

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD HAMMONS
Claimant

APPEAL NO. 08A-UI-00502-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PLEASANT CARE LLP/
GREENWOOD MANOR**
Employer

**OC: 12-16-07 R: 03
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 8, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on April 8, 2008 in Davenport, Iowa. Claimant did participate. Employer did participate through (representative) Stacey Cremeens, Administrator; Jim Slemmons, maintenance worker/housekeeper; Lisa Jewett, Nurse; Richard Katz, housekeeper/maintenance worker; and Virginia Albert, Dietary Supervisor. Employer's Exhibit One was received.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a maintenance supervisor, full-time, beginning on August 3, 2004, through December 17, 2007, when he was discharged.

On December 13, 2007, the facility was subjected to a fire marshals' inspection. The claimant had been told previously in September and October that a fire marshal inspection would take place soon and that the claimant should insure that the facility was in compliance. The claimant was on suspension on December 13, when the fire marshal inspection took place, for an incident of insubordination that occurred on December 12. The inspection identified a number of deficiencies, including: no documentation that the fire suppression system in the kitchen hood had been tested semi-annually as required, no documentation that the fire alarm system had been tested since 2005, no documentation that sensitivity testing of smoke detectors had been completed, and sprinkler heads that should have been sealed off were not done.

The claimant testified that prior to Ms. Stacey Cremeens beginning as the nursing home administrator on December 3, 2007 the prior administrator had taken documentation of completed testing out of his file and taken it to her office. Nurse Lisa Jewett confirmed that even prior to Ms. Cremeens being hired the claimant was complaining that his fire marshal documentation was being taken from his office without his permission and could not be located. Mr. Slemmons also

confirmed that the claimant, his supervisor, was complaining to him that someone had taken the fire inspections documentation file from the book and file in his office.

The fire suppression system testing, as well as fire alarm and smoke detector testing, were all done by an outside contractor hired by the facility. The contractor would then leave a receipt and detailed inspection report for the facility to present to the fire marshal or state inspector to review. The employer attempted to locate such receipts from the contractor normally hired to perform the inspections but was unable to do so. While Ms. Cremeens said the claimant had been instructed to seal off the sprinkler heads prior to her being hired, the notes she relied on did not refer to sprinkler heads but merely to cracks in the ceiling tile.

The claimant was not discharged because he wanted to change his hours of work, but because the employer held him responsible for the fire marshal inspection deficiencies.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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 in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of

unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The administrative law judge is persuaded that the prior nursing home administrator took fire inspection documents from the claimant's office and files. The claimant was not able to stop her because, as the administrator, she had the right to inspect his files. There is no evidence that the claimant was willfully or intentionally trying to fail the fire marshal inspections. He had successfully on numerous occasions placed the calls to the contractor to have the testing done and documented. The employer did not provide evidence from the contractor that they had not performed the needed inspections. The paperwork was lost and the claimant had no opportunity to look for it in his office prior to his being discharged. There is no evidence that the claimant knew to seal off the sprinkler heads. Additionally, the sealing of cracks was something generally done during the inspection with the fire marshal, as the claimant indicated.

The employer's evidence does not establish that the claimant deliberately and intentionally acted in a manner he knew to be contrary to the employer's interests or standards. There was no wanton or willful disregard of the employer's standards. In short, substantial misconduct has not been established by the evidence. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. *Budding v. Iowa Department of Job Service*, 337 N.W.2d 219 (Iowa App. 1983). Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The January 8, 2008, reference 01, decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw