

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JARED M CLARK
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL NO. 16A-UI-09752-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 25, 2016, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, an in-person hearing was scheduled for and held on September 28, 2016. Claimant participated personally. Employer participated by Barbara Owca and Jeff Croonquist. Employer's exhibits 1-4 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 11, 2016. Employer discharged claimant on August 11, 2016 because claimant did not maintain certification required by employer for his job as a supply technician (certified).

Claimant was a certified technician, having secured his certification in 2013. Claimant was to have ongoing education classes completed on a yearly basis to keep his certification. Claimant stated that he did the necessary classwork to get his certification renewed for 2016, but did not have the \$55.00 needed for the recertification. (Employer repays claimant this amount after employer is shown recertification.) When claimant did not recertify in a timely basis, he was given a six-week extension to recertify. Claimant did not timely file the necessary paperwork for recertification. Claimant was told by the national certification board that he needed to retake the test in order to be certified.

Employer told claimant On July 11, 2016 that he would have an additional one month in order to receive his certification, or he would be terminated. The certification test is only given occasionally. Claimant did sign up for and retake the test. Claimant was not successful on his test, and was terminated on August 11, 2016.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning keeping an active certification. Claimant was warned concerning this policy and knew of the policy upon his hire.

The last incident, which brought about the discharge, constitutes misconduct because claimant's last incident was the product of claimant's failure to act properly for months. Claimant stated that he didn't initially get his paperwork filed as he didn't have the \$55.00 (which employer would repay). Claimant stated this even though he'd been aware of the fee for years as he'd had to forward the money in years prior to the current year. Claimant then didn't timely send in the documentation, even though he knew of the time limits – which were six weeks since the original omission. Finally, when the claimant had been given a final warning by employer, claimant did not pass a test which was along the lines of the test he'd previously passed. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 25, 2016, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs