

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTOFER A RUDE
Claimant

APPEAL NO. 07A-UI-00657-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE MANAGEMENT
Employer

**OC: 11/19/06 R: 02
Claimant: Appellant (2)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Kristofer Rude, filed an appeal from a decision dated January 8, 2007, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 5, 2007. The claimant participated on his own behalf and with witness Shelly Plaihn. The employer, Comprehensive Management, participated by Human Resources Manager Agnes Jury.

ISSUE:

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

FINDINGS OF FACT:

Kristofer Rude was employed by Comprehensive Management from September 7, 2006 until November 15, 2006. He was a full-time maintenance supervisor. He was discharged on November 15, 2006, because on November 9, 2006, he and the property manager had attended a landlord association seminar for two or three hours. The property manager had accompanied him, along with the rest of the maintenance staff, in an attempt to “network” with vendors who would present at the seminar. It was anticipated the apartment complex would be undergoing remodeling in the future and good relations with contractors was deemed important.

The property manager did not have express permission from her supervisor before attending the seminar with the maintenance staff. Project Manager Peter LaCroix had arranged for a sub-contractor to do some work on the property but had not notified the property manager or maintenance supervisor of the scheduled visit. The sub-contractor was unable to gain access to the property to do the work until Mr. LaCroix went to the property and let him in.

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 has failed to establish any willful and deliberate misconduct on the part of the claimant. He attended a seminar for a few hours with the property manager in the hopes of gaining information and business contacts on behalf of the employer. He was not present to let a sub-contractor to do scheduled work because no one had notified the on-site staff of the sub-contractor's scheduled work. The employer did not present evidence from anyone who was involved in making the decision to discharge and was not able to rebut any of the testimony from the claimant and his witness. It has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of January 8, 2007, reference 03, is reversed. Kristofer Rude is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw