

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL MARTINEZ
Claimant

APPEAL NO. 07O-UI-08703-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC
Employer

**OC: 06/03/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 17, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 26, 2007. The claimant participated in the hearing. Sarah Hardy participated in the hearing on behalf of the employer with a witness, Adrienne Johnson. Exhibits One through Nine were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a team leader for the employer's respite program and the employer's life club program providing services to persons with disabilities from January 18, 2006, to June 4, 2007. Adrienne Johnson began supervising the claimant in April 2007.

At 11:00 a.m. on June 4, 2007, Johnson presented the claimant with a written warning for missing meetings on May 3 and May 7, failing to return phone messages, being absent from work without proper notice to her on May 30 and 31, being unavailable during the life club's hours of operation, and not updating some of the consumer's files. When she asked the claimant to sign the notice, he said he did not agree with it and was not going to sign it at that time. Johnson replied that she would have to see what the next step was since he was not going to sign the warning.

Over lunch, the claimant prepared a written response to the allegations made in the written warning. He also prepared a two-weeks notice to quit, with his last day of work to be June 15, 2007. The claimant's idea was that he was going to present his written response to Johnson and discuss the warning and his response. If the issues were not resolved, he was going to resign.

Later that afternoon, at about 2:00 p.m., the claimant was again called to Johnson's office. Johnson and a human resources representative were present. Johnson informed the claimant that he was discharged due to his failure to sign the warning. Johnson later found the notice to quit employment along with the claimant's written response to the warning. By that time, the claimant had been discharged. The claimant left the notice to quit by mistake. He had not intended to quit until after he had the opportunity to discuss his written response with Johnson.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. I do not believe that Johnson told the claimant that he was just acknowledging receipt of the warning. The claimant testified credibly that right after he said he was not going to sign it at that time, Johnson replied that she would have to see what the next step was since he did not sign it. Finally, I do not believe that the claimant intended to quit his employment until after he had the opportunity to discuss his written response with Johnson. This never occurred, so there was no voluntary quit involved in this case.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant was discharged for insubordination for failing to sign the written warning. In Green v Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980), the Iowa Supreme Court ruled that failure to acknowledge the receipt of a written reprimand by signing it constitutes work-connected misconduct as a matter of law. The Green case, however, can be distinguished from this case. In Green, the court emphasized that Green knew signing the reprimand was merely acknowledging receipt of it and had been warned that she would be discharged if she did not sign it. In this case, neither the written warning nor Johnson informed the claimant that his signature was an acknowledgement of receipt of the warning. Johnson did not warn the claimant that a refusal to sign would result in termination, but instead, she said she would have to find out what the next step was.

The reason for the discharge was the claimant's failure to sign the warning that morning. Under the facts of this case, no willful and substantial misconduct has been proven. It was not unreasonable for the claimant to ask for time to review the warning and draft a response.

DECISION:

The unemployment insurance decision dated July 17, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw