

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMIE J SMITH
Claimant

APPEAL NO. 12A-UI-10871-VS

GENESIS HEALTH SYSTEM
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/12
Claimant: Appellant (2)

Section 96.5-2-A – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 31, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 29, 2012, in Davenport, Iowa. The claimant personally participated. The employer did not show up for the hearing and did not participate. The record consists of the testimony of Tommie Smith.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked as a part-time in-home health aide for Genesis Visiting Nurses Association. The claimant started working for the employer in February 2011. His last day of work was August 10, 2012. He was terminated on August 10, 2012.

The incident that led to the claimant's termination occurred on August 8, 2012. The claimant had taken a client to a McDonalds restaurant for lunch. An employee of McDonalds called the client's parent who in turn called the employer. The McDonalds employee reported that the claimant left the child unattended. The claimant never let the child out of his sight while at McDonalds.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. There is no evidence whatsoever of misconduct in this record. The claimant testified that he was terminated because he left a child in care unattended. The employer based the claimant's termination on a report of a McDonalds employee to the child's parent, which in turn was conveyed to the employer. The claimant credibly testified that he never had the child out of his sight while at McDonalds. The employer provided no evidence to the contrary. Since the employer has failed to sustain its burden of proof to show misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 31, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css