

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C HAMANN SR
Claimant

APPEAL NO. 10A-UI-07261-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK CORPORATION
Employer

OC: 04/04/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Hamann, Sr., (claimant) appealed a representative's May 14, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Aramark Corporation (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 7, 2010. The claimant participated personally. The employer was represented by Tom Kuiper, Hearings Representative, and participated by Donna Winchester, Food Service Director, and Randy Adams, District Manager. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 19, 1983, as a full-time utility worker. The claimant signed for receipt of the employer's handbook on June 8, 2001. The handbook has a policy that an employee must report immediately any accident or injury to his manager. The employer issued the claimant warnings for failure to follow instructions on March 12, May 4, 15, 2009, and March 10, 2010. The employer notified the claimant that further infractions could result in termination from employment.

The claimant suffered from hemorrhoids. On March 31, 2010, he went to the bathroom and was bleeding. He cleaned up after himself and was too embarrassed to tell the employer about his situation. Later the employer found drops of blood in the restroom. The employer suspended the claimant on March 31, 2010, for failure to clean up a blood spill. The claimant scheduled surgery for April 6, 2010, to correct the situation. He was released to return to work immediately following the surgery. On April 13, 2010, the employer terminated the claimant for failure to clean up the blood spill.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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). The employer discharged the claimant for carelessness in cleaning up after himself in the restroom and has the burden of proof to show evidence of wrongful intent. The employer did not provide any evidence of wrongful intent at the hearing. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 14, 2010 decision (reference 01) is reversed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css