

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID MOSS
Claimant

APPEAL NO: 10A-UI-07715-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 05/02/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

David Moss (claimant) appealed an unemployment insurance decision dated May 25, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Central Iowa Hospital Corporation (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on July 21, 2010. The claimant failed to participate in the hearing. The employer participated through Amanda Berger, Human Resources Business Partner; Gary Gibson, Facilities Manager; and Attorney Kami Lang. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 employed as a full-time operations engineer from January 29, 2007 through May 4, 2010 when he was discharged for theft of company property. The employer was investigating a recent theft of copper from its facilities. Copper is used for various projects at the hospital and all scrap copper is placed in a bin which is eventually taken to the scrap yard for money that goes back to the hospital. All employees working in this area know that there is no "self-scraping."

The recent theft occurred on approximately April 23, 2010. The employer talked to the scrap yard and learned the claimant had been paid for turning in copper scraps. The employer talked to the claimant on April 27, 2010 and he admitted he had taken copper twice. He had taken it in April 2010 and also one year prior to that. The employer subsequently discharged him.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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.

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.

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 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 claimant was discharged for theft of copper on two occasions. The employer discovered the theft after investigating an unrelated theft of copper. There is no question the claimant knew he was misappropriating the hospital's property and he then turned it in for his own personal gain. The claimant's theft shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated May 25, 2010, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs