

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAM J ITES
Claimant

APPEAL NO. 14A-UI-12129-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES REGISTER & TRIBUNE
Employer

OC: 10/12/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Sam Ites (claimant) appealed a representative's November 12, 2014, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Des Moines Register & Tribune (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 11, 2014. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

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 April 2, 2014, as a full-time digital strategy manager. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment. The employer told the claimant he was doing well in his job.

The claimant shared some personal information with the human resources person about issues he was struggling with outside of work. The human resources person had him sign a document requiring the claimant to attend counseling or he would be terminated. The claimant went to counseling and the professional told him he needed no further sessions. The claimant said he had two more free sessions and would schedule again. The claimant thought he was scheduling a session on his own apart from the agreement.

At the time of the next appointment the claimant had a work sales call that came up at the last minute. He quickly rescheduled the counseling appointment. The claimant forgot the date of the next counseling appointment and did not attend the appointment on or about October 9, 2014. On October 15, 2014, the employer terminated the claimant for not attending his personal counseling appointment.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer issued the claimant a requirement to attend counseling for non-work-related problems. The claimant complied and completed the counselor's program. The employer terminated the claimant for not attending additional counseling. The employer did not participate in the hearing and, therefore, provided no evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 12, 2014, 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