

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL R HERR
Claimant

APPEAL NO. 12A-UI-02149-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HEARTLAND HEALTH MANAGEMENT
ARBOR COURT INC**
Employer

**OC: 01-01-12
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 22, 2012, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on May 10, 2012. The claimant did participate and was represented by Toby Gordon, attorney at law. The employer did participate through Sheila Matheney, administrator; Ryan Matheney, owner; Lisa Dehne, director of nursing; Ron McCabe, maintenance supervisor; Tina Septer, housekeeping and laundry supervisor; and Deb Hartman, cook. Employer's Exhibits One through Nine were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job-connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a maintenance assistant, full-time, beginning June 8, 2007, through January 3, 2012, when he was discharged. The claimant had a long history of discipline for failure to follow the instructions of his supervisor or the owners, for creating dissension among his coworkers, and for failure to complete his assigned tasks prior to his discharge. While originally hired to be an assistant in the maintenance department, he was promoted to the maintenance manager sometime in 2009 and then demoted in December 2010 due solely to his own inability to complete the required tasks and his malicious spreading of rumors, gossip, and dissension among his coworkers. The claimant received his first written discipline in December 2010 in part for failure to follow policies and to complete tasks. He was also disciplined for carrying on a personal relationship with one of the nurses during work hours on company property. He was required to come up with an "action plan" to correct the deficiencies but never did so.

On June 27, 2011, the claimant was suspended for three days due to his insubordination of the owner instructions regarding the fire marshal's inspection. The claimant had no business

participating in the fire marshal inspection as he was no longer a supervisor. His actions were witnessed by other employees who confirmed that he was sarcastic and snide during the inspection and made derogatory comments about the owners. On June 30 he was warned that any further infractions would lead to his discharge.

Mr. and Mrs. Matheney, the owners of the business, were out of town the week of December 28, 2011 and Lisa Dehne, the director of nursing, was in charge. During that week, Ron McCabe, the claimant's immediate supervisor, changed the method by which tickets for maintenance projects were to be handled. The claimant, as was part of his usual practice, objected and refused to follow the new procedures set by Mr. McCabe. The claimant spoke to Mr. McCabe and told him he was a "fucking idiot" and that when Shelia (Mrs. Matheney) returned to work she would change his directive regarding the maintenance tickets. The claimant complained to Ms. Dehne and told her wanted to "kill" Mr. McCabe and that "somebody needs to get rid of him." Ms. Dehne did not giggle or find the claimant's threats amusing. She immediately contacted Mrs. Matheney to report what had occurred. Ms. Dehne also discovered that the claimant had altered the Christmas card left for the claimant's coworker John by the cook Deb Hartman. John was so upset by what he thought Ms. Hartman had written on the card, he would not perform maintenance tasks in the kitchen. On January 3, when the claimant was interviewed by Mrs. Matheney regarding the latest allegations against, him he admitted in front of Ms. Dehne that he threatened Mr. McCabe and altered the Christmas card that Ms. Hartman left for John.

The claimant had previously been disciplined for telling lies to the head housekeeper about what Mr. McCabe was allegedly saying about her and telling Mr. McCabe that Ms. Septer was saying unkind things about him. When Mr. McCabe and Ms. Septer spoke, they discovered that the claimant was the one behind the lies and the rumors and was working to cause dissension to get Mr. McCabe fired, as he did not want to be supervised by anyone.

Earlier in the week of December 28, the claimant was involved in another altercation he caused when he told John a lie about a comment that Mr. McCabe allegedly made about the daughter of another employee. The claimant had no business reason to repeat the comment to John and if he was really concerned about it, could have gone to management to complain. Instead, he engaged in his usual pattern of trying to cause dissension and disruption amongst his coworkers. The claimant thrived on trying to create chaos in the workplace and on not taking direction or instruction from any of his supervisors.

Greg Fields worked as a part-time mower during a few months in the spring and summer of 2010 and 2011. Mr. Fields was to complete an internship for which he would have been given college credit. When officials contacted Mrs. Matheney to have her verify that Mr. Fields had in fact completed the assigned volunteer work, she told them the truth that he had not done so. Mr. Fields clearly has a grudge against and ill will towards Mrs. Matheney and his statements found at Claimant's Exhibit A are not credible or believable. Mr. Fields' statements conflict with other long-term employees, such as Ms. Septer, who were in the facility and had more knowledge about what really occurred.

The claimant's attempt to disrupt the workplace was also evident when Mr. McCabe was hired to be the supervisor and he made unkind and false comments about his coworkers to Mr. McCabe. The claimant had a demonstrated pattern of attempting to cause disruption and dissension.

Even after he was suspended on December 30, the claimant went to a duplex owned by the employer to work on it. He easily could have called the employer and told them of the tenant's

request, but instead he worked and billed the employer during a time period he knew he was suspended and not allowed to work. This is just one more instance of the claimant failing to follow any of his superior's instructions and instead doing only what he wanted to do.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985).

The evidence is overwhelming that the claimant had a long-term pattern of misbehavior, including insubordination and attempting to cause dissension and disruption in the workplace. His final acts of misconduct include threatening to kill his supervisor, calling his supervisor a "fucking idiot," altering another coworker's Christmas card to include sexual innuendo, and working when he knew he was suspended. The claimant had ample warnings, including a

suspension and a demotion, and knew or should have known that his own actions could lead to his discharge. The employer's evidence establishes misconduct to such a degree of recurrence after multiple warnings for the same to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The February 22, 2012 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw