

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DREW C VAN METER
Claimant

APPEAL NO. 11A-UI-11261-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

**OC: 07/24/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

ABCM Corporation (employer) appealed a representative's August 16, 2011 decision (reference 01) that concluded Drew Van Meter (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 21, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Sharon Quail, Administrator; Renee Loughren, Director of Nursing; and Rayne Nolte, Human Resources Coordinator. 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 February 21, 2011, as a full-time certified nursing assistant. The claimant signed for receipt of the employer's handbook on February 23, 2011. Prior to the claimant being hired he completed an Application for Hire. On February 18, 2011, he completed an Occupational Health Assessment. In that assessment the claimant answered in the negative to whether he ever had, or currently had a work-related injury or illness and to whether he ever received workers' compensation benefits. On February 21, 2011, the claimant certified that the information was correct. He understood that he could be terminated if he intentionally misrepresented, omitted or falsified the Assessment.

On July 17, 2011, the claimant fell down stairs at work and was injured. The employer discovered that on January 15, 2010, the claimant fell off a ladder at a previous job and received workers' compensation benefits. The claimant was released to return to work without any restrictions prior to his hire date of February 23, 2011. On July 21, 2011, the employer terminated the claimant for falsification of his Assessment. The employer would have hired the claimant as a certified nursing assistant had the claimant answered the questions about workers' compensation benefits in the positive.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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.

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer must prove that the Occupational Health Assessment was an application for hire, the claimant willfully and deliberately falsified the Assessment and the falsification could cause harm to the claimant, the employer or others. First of all, the Assessment was not the application for hire. This code section only applies to Applications for Hire. The claimant indicated at the termination meeting that he had forgotten

about the previous work-related injury at the time he completed the Assessment. There was no information presented at the hearing that indicated the claimant's inaccurate information was not willful or deliberate. In addition, the claimant's answers did not change the claimant's hiring conditions and, therefore, caused no harm. The employer has failed to prove the claimant was discharged for misconduct. Benefits are allowed.

DECISION:

The representative's August 16, 2011 decision (reference 01) is affirmed. 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/pjs