

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ROBERT D COUCH JR
610 W 4TH ST
OTTUMWA IA 52501

RESCARE INC
c/o MARIE SHEFELBIN
HUMAN RESOURCE ADM
301 W BURLINGTON ST
FAIRFIELD IA 52556

Appeal Number: 04A-UI-02326-SWT
OC 01/25/04 R 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 23, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 26, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeri Crile participated in the hearing on behalf of the employer with witnesses, Sandy Heller and Pam Martin. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a community support worker for persons with mental illness from September 4, 2002 to January 22, 2004. The claimant was informed and understood that under the employer's work rules, employees were required to notify their supervisor if they were not able to work as scheduled. The claimant had received several

warnings while he was employed, the last of which was on September 4, 2003, for numerous instances of inappropriate conduct and conduct in violation of the employer's work rules. He was warned that further misconduct would be grounds for termination.

The claimant was scheduled to work starting at 9:00 a.m. on January 12, 2003. The claimant blacked out due a medical problem at about 8:45 a.m. The claimant was not coherent due to his medical conduct. His girlfriend, who was with him that morning, called the claimant's supervisor but had to leave a voice mail message because the claimant's supervisor was on vacation and she could not get anyone else on the phone. When the claimant's clients called, his girlfriend informed them that he was ill and would have to cancel their services. She also called one of the clients to let him know that the claimant would not be there that day. The claimant tried to get in to see his doctor, but was not able to get an appointment until January 14. The claimant called a supervisor on January 13. He explained that he would not be at work on January 13 and 14 and was seeing a doctor the next day. He was informed that he would need to bring in a doctor's excuse.

The claimant went to the doctor on January 14 and his doctor excused him from working until he could see a specialist about his condition. He contacted the employer on January 14 and informed them about his doctor's advice. He was again reminded to bring in a doctor's excuse. The claimant's girlfriend brought in a doctor's excuse on January 20, 2004.

On January 22, 2004, the employer discharged the claimant for: (1) keeping a client's checkbook at his home, which the employer considered a violation of a work rule that states, "ResCare property should not be taken home without supervisory consent," (2) Having his girlfriend call client to cancel services, which the employer considered a breach of confidentiality for informing his girlfriend about who his clients were, and (3) not personally notifying his supervisor about his absence on January 12 and for not supplying the medical excuse until January 20.

In regard to the checkbook, the client, who was not required to have a protective payee, had allowed the claimant to keep his checkbook in the claimant's car. The claimant had been informed about this arrangement when he took over for the previous community services worker and had never been informed that there was a problem safeguarding the checkbook for the client.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No final act of willful and substantial misconduct has been proven in this case. The claimant was absent from work for legitimate medical reasons verified by a medical excuse. He was unable to contact the employer directly on January 12, and the claimant's girlfriend tried to contact someone directly but was not successful. The claimant was unaware that he could not store a client's checkbook in his car and was following the practice of the person who worked with the client previously. The girlfriend contacted one client because the claimant was unable to. Under the circumstances, this was at most a good faith error in judgment.

DECISION:

The unemployment insurance decision dated February 23, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/d