

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BEAU M BRIDGES

Claimant

APPEAL NO: 18A-UI-07193-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 05/27/18

Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 29, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 23, 2018. The claimant participated in the hearing. Emily Foster, Assistant Director of Nursing; Kayla Harken, Assistant Administrator; and Caroline Semer, Employer Representative; participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-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 full-time CNA for Care Initiatives from January 17, 2017 to May 31, 2018. He was discharged for taking an excessively long break and failing to complete his documentation in a timely manner under the employer's progressive disciplinary system.

On December 18, 2017, the claimant received a verbal warning in writing for using a hoist lift alone on a two person transfer. On April 28, 2018, the claimant started his 15 minute break at 3:30 p.m. and did not return until 6:15 p.m. and the employer could not find him on the premises. The claimant testified his brother fell on his bike and he was counseling him about seeking medical treatment. On May 23, 2018, the claimant received a final written warning for refusing mandation which occurs when the employer needs staff to work past the end of their shift to cover the floor so the facility is in ratio. The claimant said he did not want to stay but testified he eventually agreed to stay and split the shift with another employee. Two nurses signed the final written warning indicating the claimant did not stay. On May 31, 2018, the claimant was terminated for failing to notify the charge nurse he was going on break and taking an extended break and failing to complete his documentation in a timely manner. The claimant told co-workers on May 30, 2018, he was taking a 15 minute break but was gone for one hour and stated he fell asleep. He did not complete his charting before leaving his shift. He stated he came in the following morning to do his documentation but he did not clock in and the

employer has no record of the claimant coming in the following day. Even if he did come in the next day and work on charting, that practice is not acceptable to the employer as the documentation has to be completed before an employee leaves his shift.

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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

While the claimant disputes much of the employer's testimony, he testified he could not recall many of the events in question. He did not remember the solo hoier lift. He does recall the extended break and call from his brother April 28, 2017, but stated the call lasted closer to one hour than two and one-half hours. Regardless of whether the break was one hour or two and one-half hours, his break was scheduled to last 15 minutes and he exceeded that time substantially. Employees are not to leave the premises during their 15 minute break and although the claimant stated he was outside, the employer believes the claimant left because it could not find him. The claimant denies he refused mandation May 22, 2018, but two nurses documented he stated he did not want to stay. The claimant maintains that after initially saying he did not want to stay, he and another employee split the shift, but there is no evidence that the claimant notified the employer of this plan and the employer remained under the belief that the claimant refused mandation which would have left the employer out of ratio and in violation of state law. On May 30, 2018, the claimant took an extended break without notifying the charge nurse and told co-workers he fell asleep, in violation of the employer's policy regarding sleeping on the job. He then left without completing his required documentation that was due before he left his shift. The claimant knew he was on a final written warning and knew or should have known that another violation would likely lead to his termination. Despite that knowledge, however, the claimant fell asleep on the job and left without doing his documentation in a timely manner.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The June 29, 2018, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn