

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN L MATTOX

Claimant

FIVE STAR QUALITY CARE INC

Employer

APPEAL NO: 100-UI-17496-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 16, 2010, reference 01, that held the claimant was not discharged for misconduct on June 24, 2010, and benefits are allowed. After an October 5, 2010 hearing, an ALJ issued a decision that reversed the department decision and the matter was appealed.

The Employment Appeal Board remanded this matter for a new hearing on December 22, 2010. A telephone hearing was held on January 24, 2011. The claimant participated. Darlene Brown, HR Assistant, and George Smith, Maintenance Supervisor, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began full-time employment as a maintenance worker on August 1, 2006, and last worked for the employer on June 16, 2010. The claimant received the employer attendance polices that required him to report absences from work. The claimant injured his back and he received employer-approved FMLA for periodic absences due to this reason. The claimant was required to report his absences.

The employer acknowledges claimant properly reported absences on June 17 and 18, 2010. The claimant reported an absence from work to Supervisor Childers on June 21, and he made a late call to report an absence on June 22 to someone on the second shift. When the claimant called to report an absence to his supervisor on June 23, he was told he was terminated as a voluntary quit for being a no-call/no-show to work for three consecutive days.

The claimant had notified the employer after receiving a final warning on June 8 for attendance issues that he was considering a transfer to another employer facility. When asked to make it a

written request, he declined to do so. Claimant believes the employer was motivated to terminate his employment due to a government inspection based on his black mold complaint.

REASONING AND CONCLUSIONS OF 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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 24, 2010.

The employer elected to treat claimant's employment separation as a voluntary quit rather than a discharge for attendance issues. The claimant offered credible testimony he notified the employer about his absences on the dates at issue that negates the employer contention he voluntarily quit as a three-day, no-call/no-show to work.

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The department decision dated August 16, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on June 24, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css