

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY P SCHLEISMAN
Claimant

APPEAL NO. 11A-UI-00311-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAPETREE MEDICAL STAFFING INC
Employer

**OC: 11/28/10
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Anthony Schleisman, filed an appeal from a decision dated December 28, 2010, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on February 16, 2011 and concluded on March 9, 2011. The claimant participated on his own behalf and with witness JoDonn Shaver. The employer, Grapetree Medical Staffing, Inc. (Grapetree), participated by CEO Tim Kinnetz, Human Resources Generalist Janine Kinnetz, Director of Operations Kelly Seymour, and Registered Nurses Polly Young and Laura Scott. Exhibits One, Two, Three, Four Five, and Six were admitted into the record.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Anthony Schleisman was employed by Grapetree from October 17, 2008 until December 3, 2010 as a registered nurse. His last assignment was at Glenwood on a full-time basis. He had received training on the employer's code of ethics as well as the policies of Glenwood. Both prohibit workplace violence, harassment, and inappropriate language, as well as any act which would "annoy or alarm another person."

On November 23, 2010, the claimant and another nurse, Laura Scott, were working in the infirmary. It was well known that Mr. Schleisman did not like working on the infirmary but initially things were quiet. But around noon many patients began to appear and the claimant became agitated. He stood up and said he was "going to [his] room." Ms. Scott said he could not leave at that time and he became more agitated. He began pacing up and down in the hall and finally came back into the room where he "rushed" up to Ms. Scott, very angry and red in the face, clenched his fists and made some "clicking" sounds with his teeth as though he was going to try to say something,

He went back to his desk and after gathering some papers, again approached Ms. Scott getting close enough for her to feel his body heat and his spittle on her face. She feared physical harm from him so took a wheelchair-bound patient into another room. Mr. Schleisman then picked up the phone and placed a call to RN Supervisor Polly Young when he demanded she "get [him] out of there." He conducted the conversation in a loud voice and slammed the phone down. He then threw down some papers which scattered and struck Ms. Scott, and walked off the assignment.

The matter was reported to Grapetree by the director of nursing at Glenwood. An investigation was conducted by Staffing Manager Jennifer Bemis who interviewed witnesses and took statements. The witnesses all indicated the claimant was claiming to be "incompetent," and that the ringing phones and Ms. Scott were raising his anxiety level causing him to become "flustered." Other witnesses reported him as saying he was "freaking out."

Mr. Schleisman was on a pre-approved vacation for the next eight days during which time the investigation concluded. He was notified by Ms. Bemis on December 1, 2010, he was not to return to Glenwood and on December 2, 2010, he was notified by letter from CEO Tim Kinnetz he was discharged from Grapetree.

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 claimant maintains he did not do any of the things Ms. Scott accused him of doing. He admitted he was very hungry and the low blood sugar caused him to be “shaky.” But the evidence from the other witnesses indicates it was much more than this. The statements agree he claimed to be “incompetent” and accused Ms. Scott of raising his anxiety level. He could not provide any explanation as to why all the witnesses would conspire to manufacture the details of this incident, with such details being consistent as to his actions and speech.

If, as Mr. Schleisman claims, it was low blood sugar which caused him to act in this threatening manner, he has provided no medical evidence to corroborate he is prone to such an extreme reaction. He left his work assignment without authorization, hung upon his supervisor, and “acted out” in a manner his co-worker found threatening. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative’s decision of December 28, 2010, reference 01, is affirmed. Anthony Schleisman is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css