

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEVEN DUNLAP**  
Claimant

**APPEAL NO: 09A-UI-03606-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CEDAR RAPIDS COMM SCHOOL DIST**  
Employer

**OC: 01/25/09**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Steven Dunlap (claimant) appealed an unemployment insurance decision dated February 24, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with the Cedar Rapids Community School District (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 1, 2009. The claimant participated in the hearing with Attorney Gerald Hammond. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**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 employed as a full-time classroom teacher from June 2004 through January 23, 2009 when he voluntarily resigned. He was advised that his job was in jeopardy and that he had to pass a test or he would be discharged. The claimant opted to resign instead of being discharged.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant quit his employment instead of being discharged. When a claimant is compelled to resign instead of being discharged, it is not considered a voluntary separation. 871 IAC 24.26(21). The evidence establishes the claimant was discharged, but even if he resigned to avoid a discharge, the outcome would be the same; a termination of employment initiated by the employer for work-conduct issues is considered a discharge for unemployment insurance purposes. 871 IAC 24.1(113). The only remaining issue is whether the discharge was for work-related misconduct.

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.

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 employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated February 24, 2009, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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