

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEN MUJKANOVIC
Claimant

APPEAL NO: 12A-UI-02060-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

OC: 01/15/12
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Alen Mujkanovic (claimant) appealed an unemployment insurance decision dated February 23, 2012, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Lutheran Services in Iowa, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 10, 2012. The claimant participated in the hearing with Attorney Martin Ozga. The employer participated through Rebecca Hines, Program Supervisor. Based on the evidence, the arguments of the parties, 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 claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

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 direct support professional from May 3, 2011 through January 17, 2012 when he was discharged for a repeated violation of company policy. He was aware of the employer's policy on a tobacco free workplace environment. The employer provides direct support for individuals with mental or physical disabilities and individuals are served in their own homes. Consequently, the employer prohibits employees from smoking and even possessing tobacco items while on shift.

The employer received a report from clients and the leader of the claimant's work site that he was smoking just outside the client's apartment and inside as well. He received a verbal warning on August 3, 2011 and the employer reviewed the policy with him. In October 2011, it was again reported by a staff member and a client that he was smoking inside the client's apartment. A second verbal warning was issued to him on October 13, 2011 and he was advised that his job was in jeopardy if it happened again.

A request was made for the employer to conduct a spot check on a client apartment so several supervisors went to a client's apartment in which the claimant was working on January 10, 2012. Three clients lived there but only two were present at the time. When the supervisors entered the apartment, they noticed a very strong smell of perfume or cologne. While they were there, one client approached them and reported that he was upset because the claimant was smoking cigarettes in the apartment. The employer talked to the claimant about it and he admitted smoking and apologized for it. That same client later went outside to talk to the supervisors because he felt like he was getting "picked on" and was getting "crap" because he told on the claimant. The client got his mom on his cell phone and had his mother talk to the employer about it.

The claimant was suspended on January 10, 2012 since that was not his first offense and was discharged on January 17, 2012. During the hearing, the claimant denied that he was smoking on January 10, 2012 but he did admit that he told the employer on January 10, 2012 that he had been smoking in the apartment. He testified that Program Supervisor Rebecca Hines told him it would be a "freebie" if he told the truth but she unequivocally denied that allegation. The claimant admitted that he had received two previous verbal warnings and was advised that his job was in jeopardy but he now denies that he was smoking at the times he received those warnings. The employer witness testified the claimant had previously admitted that he was smoking.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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 discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on January 17, 2012 for repeatedly violating company policy. He admitted he was warned twice about smoking and that he admitted to the employer on January 10, 2012 that he had been smoking but now he denies that he was smoking all three times. The claimant's admissions at the time of the incident are found to be more reliable than his current denials. The employer has met its burden. The claimant's repeated policy violations show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 23, 2012, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css