

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMY WHAYEE**  
Claimant

**APPEAL NO. 09A-UI-03552-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RESCARE INC**  
Employer

**OC: 02/08/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant, Jimmy Whayee, filed an appeal from a decision of a representative dated February 27, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 31, 2009. Claimant participated personally and with witness Martha Teaway. Employer participated by Ida Newquist.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired to provide community support services to clients of the employer in July 2007. He was discharged on January 29, 2009. The employer was concerned that the claimant could not do his job well enough and did not show enough improvement in his performance. The employer felt the clients could be subjected to risk with the claimant's continued employment. On January 24, 2009, the claimant was assisting a client in his home. The client had health problems. The claimant called and spoke to his supervisor about what action to take. The client also spoke to the supervisor. The client called an ambulance to take himself to the hospital. The employer did not feel the claimant handled this incident correctly. The claimant had been coached and counseled to improve his job performance. The employer did not feel the claimant was attentive enough to detail, and that he could not do the job. The claimant was discharged on January 29, 2009.

**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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The employer was dissatisfied with the claimant's work. There was no evidence that the claimant deliberately disregarded the interest of the employer or performed in a negligent or careless manner manifesting a substantial disregard of the employer's interests.

Work-connected misconduct as defined by the unemployment insurance law has not been established in this case. There was no last act of misconduct. The claimant continued to work for the employer after the January 24, 2009 incident and was discharged on January 29, 2009.

The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated February 27, 2009, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

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