

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS J PATTERSON
Claimant

APPEAL NO. 13A-UI-06865-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOUNT MERCY UNIVERSITY
Employer

**OC: 05/12/13
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Thomas Patterson (claimant) appealed a representative's June 3, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Mount Mercy University (employer) for insubordination in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 16, 2013. The claimant participated personally. The claimant's wife, Sara Patterson, observed the hearing. The employer participated by Rick Hall, Maintenance Supervisor; Vicky Smith, Vice President for Administration; and Victor Kies, Lead Grounds Person.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on February 28, 2005, as a full-time grounds laborer. The claimant had a traumatic brain injury that causes involuntary movements of his arms and hands. On July 17, 2012, the employer issued the claimant warning for being intimidating to the lead grounds person. The employer notified the claimant that further infractions could result in termination from employment. On February 8, 2013, the employer issued the claimant a written warning when the claimant became upset when the lead grounds person gave him instructions. The lead grounds person was intimidated by the claimant until the claimant walked away from his superior. The claimant was also pulling branches from under the feet of a person who was using a chain saw. The employer notified the claimant that further infractions could result in termination from employment.

On May 9, 2013, the lead grounds person was giving the claimant instructions. The claimant had his fists clenched to control his temper and tremors. The claimant started talking and the lead grounds person told the claimant to be quiet and let him finish. The claimant stood back with his fists clenched, threw his arm up, saluted, and grinned. The lead grounds person was intimidated and then angry. The employer terminated the claimant on May 9, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's June 3, 2013 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css