

Mr. Roling received written warnings on August 1 and September 1, 2005, for failing to follow orders. He would be instructed to perform some job duty but it would not get done. He would say he was too busy or forgot about it. At the time of hire Mr. Roling had received a copy of the employee handbook and knew his job was in jeopardy as a result of the prior two warnings.

On September 23, 2005, Furniture Manager Dee Gross told the claimant to do an inventory of two kinds of recliners in the storeroom because she had to make a report to the district manager. She went on a 15-minute break, and when she returned he had done nothing regarding the inventory. With her help they concluded the entire task in five or ten minutes. Mr. Roling insisted he could not do the inventory because some of the boxes were stacked up and he could not move them. However, all that was required was to climb up on top of one of the boxes and look behind it, or move it slightly to one side.

Ms. Gross mentioned the matter to Assistant Manager Kathy Meyer, who said the claimant would have to be written up again for failing to follow orders. This was the third written warning in less than two months, and he was discharged under the progressive disciplinary policy.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant had been advised his job was in jeopardy as a result of his failure to follow the directions and instructions of the supervisors. The final incident was a failure to do a short inventory of two furniture items while the supervisor was on break. The administrative law judge does not find the claimant's explanation to be convincing, that he could not count the small number of items by himself. The job simply required walking behind the boxes in front or on top of them so see over them to the row behind. This is not a job which would have required moving the boxes physically except for a small amount of tilt. The claimant was attempting to avoid doing the work as instructed by his supervisor and this is conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of October 11, 2005, reference 01, is affirmed. Richard Roling is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount provided he is otherwise eligible.

bgh/kjw