

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RONALD G CASON**  
Claimant

**APPEAL NO. 14A-UI-02767-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHILDREN AND FAMILIES OF IOWA**  
Employer

**OC: 02/09/14  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated March 7, 2014, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was held on April 3, 2014, by telephone conference call. The claimant participated personally. Emily Stout was a witness for the claimant. Employer participated by Sharon Haning, vice president of human resources, and Gwen Babberl, clinical manager of group homes. Claimant's Exhibit A was received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a nonprofit organization that offers services to children and families. One of the services provided is a group home for boys ages 12 to 17. The claimant was hired on June 21, 2013, as a full-time youth service worker. His last day of work was February 13, 2014. He was terminated on February 13, 2014.

The incident that led to the claimant's termination occurred on February 11, 2014. The boys who live at the home had just returned from school and were getting ready for a group session. The claimant was present as was another employee named Emily Stout. Also present were Gwen Babberl, clinical manager, and a therapy intern. The claimant went back towards the staff office. He thought that Ms. Babberl was on the floor and that there was ongoing supervision. Ms. Babberl was meeting with Ms. Stout and so there was confusion as to who was actually on the floor. An altercation broke out between two boys and an intervention needed to be done. The employer terminated the claimant because the employer believed that he had left the floor unsupervised.

## 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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8) See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988) The legal definition of misconduct excludes errors of discretion or judgment in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The administrative law judge concludes that the final incident that led to the decision to terminate the claimant was not an act of misconduct and therefore the claimant was not terminated for a current act of misconduct. The parties have differing recollections on who was where when the altercation broke out between the two boys. The claimant and Emily Stout both testified that there was supervision on the floor and that the claimant had not left the boys unsupervised. At best there seems to have been an error of judgment or discretion on the claimant's part when he left the floor to go to the office. This is not disqualifying misconduct.

The administrative law judge did consider the other grounds for termination that were listed in the letter sent to the claimant on February 13, 2014. The employer may have had good business reasons for terminating the claimant but none of these reasons constitute a current act of misconduct on which to base a disqualification. Benefits are therefore allowed if the claimant meets all other eligibility requirements.

**DECISION:**

The decision of the representative dated March 7, 2014, reference 01, is reversed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs