

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD R SCHMIDT
Claimant

APPEAL NO: 14A-UI-08139-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA VETERANS HOME – MARSHALLTOWN
Employer

OC: 07/13/14
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Donald R. Schmidt (claimant) appealed a representative's August 1, 2014 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Iowa Veterans Home – Marshalltown (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2014. The claimant participated in the hearing. Debra Campbell of Employer's Edge appeared on the employer's behalf and presented testimony from two witnesses, Susan Wilkinson and Penny Cutler-Bermudez. During the hearing, Employer's Exhibits One and Two were entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on December 21, 2007. He worked full time as food service worker. His last day of work was July 15, 2014. The employer discharged him on that date. The stated reason for the discharge was a further incident of harassment and inappropriate behavior after prior warnings.

The employer had already started an investigation on June 5 regarding general complaints about harassment in the work place. A report got back to the claimant that another employee had been referring to him as being "bi-polar." On June 25 the claimant was in the break room when that other employee came in to clock in. The claimant began to shout at the other employee, saying that two other people had told him he had said that the claimant was bi-polar, and that this other employee was the "f - - - er."

When interviewed about the incident on June 27 the claimant indicated that he had lost his temper and could have used the vulgar language. The employer informed the claimant on June 27 that the inquiry could result in some further disciplinary action. The claimant had two prior suspensions for inappropriate behaviors including angry outbursts and swearing at coworkers. As a result of this additional incident, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. Rule 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's inappropriate behavior on June 25 after the prior warnings shows 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. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's August 1, 2014 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of July 15, 2014. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs