

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DALE D MURLEY**  
Claimant

**APPEAL NO: 07A-UI-07678-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LORING HOSPITAL**  
Employer

**OC: 07/15/07 R: 01**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Dale D. Murley (employer) appealed a representative's August 7, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Loring Hospital (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 27, 2007. The claimant participated in the hearing. Michael Ketcham appeared on the employer's behalf and presented testimony from two other witnesses, Martin Podraza and Becky Pontious. 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?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 26, 1973. He worked full time as purchasing manager on a routine schedule of 7:30 a.m. to 3:30 p.m., Monday through Friday at the employer's hospital. His last day of work was July 12, 2007. The employer discharged him on that date. The stated reason for the discharge was insubordination and failing to follow instructions.

The employer had verbally and informally had discussions with the claimant over several years regarding concerns on his attitude toward and interactions with employees and supervisors. He was given a written warning on April 6, 2006 for issues with his prior supervisor and again verbally warned on August 31, 2006. In the spring of 2007 he got a new supervisor, Mr. Podraza. On July 5 the claimant had a verbal altercation with an assistant who he supervised for some duties but who was also directly supervised by Mr. Podraza for other duties regarding the assistant's allocation of her time between the two areas. As a result of the claimant's behavior toward the assistant, on July 9 Mr. Podraza and Ms. Pontious, the human resources assistant, met with the claimant. He was informed that he was being placed on a three-day suspension for July 10, July 11 and July 12. Mr. Podraza told the claimant to go

home and use the time off to reevaluate himself so that when he came back he would be a different person.

On July 11 at approximately 9:00 a.m. Mr. Podraza discovered that the claimant had come in to work; the claimant indicated he was working on doing some pricing for an inventory that was due so that he would be able to have it done and be able to take some time off at the end of the month. Mr. Podraza told the claimant to go home, which he did. On July 12 the claimant was called back in to meet with the employer regarding his failure to abide by the suspension by coming in on July 11. The claimant's explanation was that he was salaried and that he was just doing work "on his own time." As a result of the events, 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.

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

The claimant’s explanation that he did not believe the three-day suspension did not mean he could not come in and work “on his own time” during the suspension period is not reasonable. The claimant’s defiance of the suspension by coming in to do work on the premises during the suspension 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 7, 2007 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 12, 2007. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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