

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN F JACK
Claimant

APPEAL NO. 08A-UI-09051-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DAVENPORT
Employer

**OC: 08/31/08 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 23, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 22, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Christina Murphy participated in the hearing on behalf of the employer with a witness, Dick Cale.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a bus driver from May 1, 2006, to September 2, 2008. The claimant's supervisor was Dick Cale.

The claimant called in absent on July 24, July 31, August 7, August 14, and August 21, 2008. The reason the claimant called in on these scheduled Thursdays was because on Thursdays, the claimant's duties involved driving a shuttle van to transport other drivers to their work locations. He overheard drivers make comments of a sexual nature and believed they were making the comments because he was a member of the Jehovah Witness religion.

When management noticed that the claimant had not worked five Thursdays in a row and was taking sick leave to cover his absences, a meeting was scheduled with the claimant. During the meeting held on September 2, 2008, the claimant said he was calling on Thursdays because he did not want to work that day because of the sexual innuendo comments made by some of the drivers while he was driving the shuttle van. When asked to name the drivers, the claimant declined to do so and said it would not do any good. The claimant then was informed that if he was not willing to work on Thursdays, he would be terminated. He then was asked if he would work on Thursdays. The claimant responded "probably not."

The employer discharged the claimant on September 2, 2008, because the claimant had called in absent on five consecutive Thursdays and refused to work his scheduled shifts on Thursday.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. He would not work on a scheduled day of work and declined to identify the drivers who he alleged were harassing him to allow the employer to take action to correct the situation. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 23, 2008, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs