

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A CAPERS
Claimant

APPEAL NO. 07A-UI-02572-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

**OC: 06/18/06 R: 03
Claimant: Appellant (5)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 8, 2007, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 29, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Larry Allen participated in the hearing on behalf of the employer. Exhibits 1, 2, 3, A, and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cook in the employer's nursing home from June 29, 2006, to January 31, 2007. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify their supervisor before the start of their shift if they were not able to work as scheduled and could be discharged for excessive unexcused absences.

The claimant was scheduled work at 11:00 a.m. on February 1, 2007. He called in before the start shift and left a message indicating that he would not be in because his apartment had been broken into. On February 1, the claimant was arrested and jailed for several unpaid traffic offenses. At about 2:30 p.m. that afternoon, a friend of the claimant' called the employer and stated that the claimant would not be at work on February 2 because he was in jail for unpaid traffic tickets.

While the claimant was in jail on the traffic charges, he was arrested and jailed for felony possession of marijuana with the intent to deliver. The claimant was absent from work without notice to the employer until February 9. On February 9, the claimant contacted the employer and was informed that his employment had ended because of his absence from work without notice to the employer.

The claimant also contacted the employer after he was released from jail on February 13. The claimant asserted that he had been falsely arrested on the marijuana charges and was innocent. The employer informed the claimant that if he was found not guilty of the charges, he could reapply for work. The prosecuting attorney filed a motion to dismiss the charges against the claimant due to insufficient evidence. The judge entered an order dismissing the charges on March 8. The claimant contacted the employer to reapply for work but there was no work available.

The employer discharged the claimant on February 9, 2007, due to the claimant's failure to notify the employer regarding his absences.

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.

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's excessive unexcused absenteeism 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. The absences after February 2, 2007, have to be considered unexcused since the claimant did not call and properly notify the employer regarding his absences. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated March 8, 2007, reference 03, is modified with no effect on the outcome of the case. 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