

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R PRIDGEN
Claimant

APPEAL NO. 09A-UI-10940-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

WILLIAM PENN UNIVERSITY
Employer

**Original Claim: 06/21/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department representative's decision dated July 22, 2009, reference 01, that held he was discharged for misconduct on June 17, 2009, and that denied benefits. A hearing was held on September 10, 2009. The claimant, his wife, Stacy, and attorney, Karen Kopitsky, participated. Bonnie Johnson, CFO, and Jobi Lawrence, ELS Project Office Director, participated for the employer. Claimant Exhibits 1 through 3 and Employer Exhibits A through D were received as evidence. The claimant and employer stipulated that the evidentiary record in this case would be considered as evidence in Appeal No. 09A-UI-10941-ST.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds that: The claimant began part-time employment on September 16, 2004, and became a full-time employee on July 1, 2005. The claimant last worked as an IT Supervisor on June 17, 2009.

The claimant was discharged on June 17, 2009 by Supervisor Lawrence, who stated his services were no longer needed. The claimant was not issued a written termination statement. Prior to discharge, the claimant was never issued any written warning for the reasons the employer offered for discharge in the hearing. The employer could not establish the date of any verbal warnings regarding the discharge reasons other than a December 2008 conference with the claimant and other employees about needing to document and submit leave requests. The employer has an employee handbook that contains its policies.

Most of the employer documentation (Exhibit A, Exhibit B – Pages 5-17, Exhibit D) submitted in this matter was not in possession of the employer at the time of discharge, and the Lawrence narrative statements were authored after the discharge.

The claimant and his wife (Stacy) were employees of the employer. While they were on vacation leave, June 11 and 12, 2009, the claimant's wife called Supervisor Lawrence to report that her grandmother had passed away and that they (meaning the claimant and his wife) would be attending the funeral sometime on Monday, June 15. Stacy made arrangements to have another employee cover her work for Monday.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The administrative law judge concludes that the employer failed to establish misconduct in the discharge of the claimant on June 17, 2009, due to a failure to issue any written or verbal

warning about the reasons offered for discharge, and the failure to establish any current act of misconduct in connection with employment.

Warnings put an employee on notice of a policy violation or a failure to adhere to a standard of behavior the employer has a right to expect. Although the employer had knowledge of some issues with the claimant, it never issued any meaningful warning. While the claimant may have demonstrated some argumentative behavior, he never committed an act of insubordination toward this supervisor nor was he timely warned that he had done so. Supervisor Lawrence knew about the claimant's job search effort on employer time, but never warned him.

The employer had suspicions about the claimant's activity selling textbooks but did not have the documentation until after discharge to merit this as a reason for misconduct on June 17, 2009.

Supervisor Lawrence had sufficient information from the claimant and his wife, who were on vacation leave, that they would be missing work sometime on Monday, June 15, due to the funeral, such that their failure to report for work is not a no-call act of misconduct and, therefore, any current act of misconduct.

The lack of any written termination statement supports the claimant's testimony that he was let go because his services were no longer needed rather than the reasons offered by the employer in this hearing.

DECISION:

The decision of the representative dated July 22, 2009, reference 01, is reversed. The claimant was not discharged for misconduct in connection with employment on June 17, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw