

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDUARDO MATA CARDONA
Claimant

APPEAL NO: 17A-UI-09812-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARSDEN BLDG MAINTENANCE LLC
Employer

OC: 09/10/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 11, 2017. The claimant participated in the hearing. Kathleen Bernardino, Administrative Assistant and David Williams, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general cleaner for Marsden Building Maintenance from January 5, 2017 to August 22, 2017. The employer terminated the claimant's employment when his supervisor directed him to turn in his keys and badge August 23, 2017, and take the rest of the week off. The claimant spoke to his supervisor the following week and the supervisor mentioned another job opening in West Des Moines which was 40 minutes from the claimant's residence. His previous position was 10 minutes away from his house. The supervisor was also hesitant about telling the claimant the rate of pay for the other position but did eventually tell him it paid \$9.00 per hour rather than the \$10.00 per hour the claimant was earning. The claimant did not know if he wanted to work at that location for that rate of pay and the parties never reached an agreement on whether the claimant was going to accept that position or not. The employer tried to call the claimant a few times after that but never received a return call from the claimant. The claimant was not aware the employer attempted to call him. It sent the claimant a certified letter, return receipt requested, but another resident of the house the claimant shares with, his parents and four siblings, signed for the letter and the claimant never received it.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer removed the claimant from his position but the employer's witness did not know why. The employer's witness also stated the claimant was a no-call/no-show, but his supervisor instructed him to return his keys and his badge and take the rest of the week off and consequently he cannot be considered a no-call/no-show. The claimant did not know the

employer tried to call him on several occasions or that it sent him a certified letter, return receipt requested. There was no firm offer of work or direction made to the claimant about being moved to another account.

It appears there was a misunderstanding between the parties on whether the claimant was terminated or voluntarily quit. The employer has not presented any evidence of misconduct on the part of the claimant and the claimant did not have the required intent to quit his job. Under these circumstances the administrative law judge must conclude the employer terminated the claimant's employment for no disqualifying reason. Therefore, benefits must be allowed.

DECISION:

The September 21, 2017, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn