

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH ZLATOHLAVEK**  
Claimant

**APPEAL NO: 12A-UI-05687-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY MEDICAL CENTER**  
Employer

**OC: 04-22-12**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 9, 2012, 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 June 7, 2012. The claimant participated in the hearing. The employer provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

**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 phlebotomist for Mercy Medical Center from July 28, 2008 to April 20, 2012. The employer notified him that his employment was being terminated April 20, 2012, for violation of a known company rule. The employer alleged the claimant was clocked in at work while not being on the premises on more than one occasion. The claimant adamantly denies the charge. Approximately two weeks prior, the claimant's supervisor spoke to him about the same issue and the claimant denied leaving the building while on the clock at that time as well. The claimant's supervisor assured him he would not lose his job because of the allegations but stated at worst he might face a suspension. The verbal conversation was not memorialized in writing and the claimant was not asked to sign anything. When the employer called the claimant in April 20, 2012, and terminated his employment, it did not allege there had been any further violations since his supervisor talked to him two weeks earlier. The claimant had not received any documented verbal or written warnings about leaving the building without clocking out.

## 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:

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 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). When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined by Iowa law. The employer failed to meet its burden of proving disqualifying job misconduct. Therefore, benefits are allowed.

**DECISION:**

The May 9, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw