

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HENRY A CLARK**  
Claimant

**APPEAL NO. 09A-UI-15252-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURTIY & RESEARCH CORP**  
Employer

**Original Claim: 08/30/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated October 2, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 10, 2009. The claimant participated. The employer participated by Gretchen Goettig, human resources payroll specialist. The record consists of the testimony of Gretchen Goettig, the testimony of Henry Clark, and Employer's Exhibits 1 through 4.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides security services for clients. The claimant worked as a security officer and was initially hired on April 9, 2008. His last day of work was August 16, 2009. He was terminated on August 20, 2009. The reason for his termination was that he missed a mandatory meeting on August 20, 2009. The claimant had been scheduled to attend the meeting on August 17, 2009, but was given the wrong time for the meeting by the employer. He was then scheduled to attend a meeting on August 20, 2009. The claimant was called into work the night before and inadvertently set his alarm clock wrong. As a result, he missed the meeting. The claimant tried to get in touch with his employer to explain the situation, but no one returned his calls. The claimant found out approximately three weeks later that he had been terminated by talking to another supervisor.

The employer had a policy that if three written warnings were issued in a twelve-month period, termination would result. The claimant was warned on September 30, 2008, about inattentiveness on the job. He was dozing due to the fact that his son had just been born on September 25, 2008, and he had been at the hospital much of the time. He was also given a

warning on January 24, 2009, for a speeding violation he received while driving a company vehicle.

### **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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the duties owed by the worker to the employer. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

After carefully reviewing the evidence, the administrative law judge concludes that the final incident that led to termination is not misconduct. The claimant was terminated for failing to attend a mandatory meeting. He missed the first meeting because the employer gave him the wrong time. He missed the second meeting due to negligence on his part in setting his alarm clock after working the previous night. There is no evidence that the claimant deliberately failed to attend the meeting. Rather, his act was one of negligence in an isolated instance. This does not constitute misconduct under Iowa law. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated October 2, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/kjw