

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN KUBICEK
Claimant

APPEAL NO. 08A-UI-07791-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 06-29-08 R: 03
Claimant: Respondent (1-R)

Iowa Code section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 21, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 15, 2008. The claimant participated in the hearing. Wendy Carpenter, Security Coordinator, 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:

The claimant was employed as a full-time security officer for Per Mar last assigned at Pearson from January 2006 to June 25, 2008. The claimant was absent June 12, 2008, because of the flood and called in to report he was ill June 13, 2008. He suffered a major allergic reaction to aspirin and had to go to the emergency room June 16, 2008. He went to work June 18, 2008, and worked through June 23, 2008. On June 25, 2008, the claimant reported for work and was notified he had been replaced. He had never received any warnings about his performance or attendance and had in fact only missed two to three days during his two and one-half years with Pearson.

The employer made additional offers of work to the claimant after his separation from Pearson. Those issues have not been adjudicated by the Claims Section.

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). The claimant was absent one day because of the flood and two days due to properly reported illness and the client asked that he be replaced. The flood was out of his control, as were his two illnesses. He had only missed two or three days during the two and one-half years he was assigned at Pearson. Under these circumstances, the administrative law judge cannot conclude that the claimant's actions rise to the level of disqualifying job misconduct.

The employer did make job offers to the claimant after his separation. That issue has not yet been adjudicated by the Claims section of Iowa Workforce Development and consequently is remanded to the Claims section for an initial determination.

DECISION:

The August 21, 2008, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issue of whether the employer's job offers were suitable is remanded to the Claims section for an initial determination and adjudication.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw