

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAXIMILIAN S BRIDGEWATER
Claimant

APPEAL NO. 08A-UI-02173-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROADLAWNS MEDICAL CENTER
Employer

**OC: 02/03/08 R: 02
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Broadlawns Medical Center (Broadlawns), filed an appeal from a decision dated February 29, 2008, reference 01. The decision allowed benefits to the claimant, Maximilian Bridgewater. After due notice was issued, a hearing was held by telephone conference call on March 19, 2008. The claimant participated on his own behalf and a witness Gwenn Wells. The employer participated by Program Manager Dave Stone and was represented Rick Barrett.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Maximilian Bridgewater was employed by Broadlawns from September 24, 2001 until February 8, 2008, as a part-time crisis team worker. On December 14, 2007, Nurse Supervisor Sue Cook sent an e-mail to Program Director Dave Stone stating she had found the claimant in a locked office, with the lights off and an air mattress set up on the floor along with a breathing machine.

Mr. Stone interviewed Ms. Cook the next day but did not interview the claimant until early in February 2008. The claimant was given an evaluation on December 20, 2007, which stated he was not meeting expectations. There was another incident some time in January 2008 of “poor judgment” on the part of the claimant for which he was given a written warning on January 15, 2008.

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant was discharged for sleeping on the job on December 14, 2007. The employer delayed making any further investigation for eight weeks, during which time it issued the claimant an evaluation and another written warning. There was a seven week delay between the evaluation and the discharge, and a three week delay between the written warning and the discharge.

Broadlawns had failed to establish any good explanation for such a substantial delay between the final incident and the discharge. Under the provisions of the above Administrative Code section, there must be a current, final act of misconduct which precipitates the decision to discharge before disqualification may be imposed. The employer's delay of eight weeks puts this beyond a current act and disqualification may not be imposed.

DECISION:

The representative's decision of February 29, 2008, reference 01, is affirmed. Maximilian Bridgewater is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css