

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JORDAN M WATERS

Claimant

APPEAL NO. 11A-UI-15234-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP

Employer

OC: 10/30/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated November 22, 2011, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on December 21, 2011. The claimant participated personally. The employer participated by Ms. Ann Lee, Food Service Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jordan Waters was employed by the captioned employer from January 5, 2011 until October 3, 2011 when he was discharged by his immediate supervisor. Mr. Waters worked as a part-time food service worker and was paid by the hour. His immediate supervisor was Ms. Sandy Wilcox.

On October 3, 2011, Mr. Waters left work after being instructed to do so by his immediate supervisor. Based on the comments that were made to Mr. Waters by his supervisor, he reasonably concluded that he had been discharged from employment. When the claimant attempted to report to work the next day, his badge did not work which further led the claimant to the ultimate conclusion that he had been discharged.

It is the employer's position that the claimant was not discharged but was separated after he failed to report to work for three or more consecutive work days after October 3, 2011 in violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 proof in this matter. See Iowa Code § 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter the claimant participated personally offering firsthand, sworn testimony that he was discharged by his immediate supervisor on October 3, 2011. Claimant testified with specificity that he had been instructed on three occasions that day to "leave" by his supervisor

and finally did so after the supervisor had called security. Claimant further testified that when he attempted to report to work the next day his badge did not work further leaving him to conclude that he had been discharged.

While the employer was aware this was a disputed claim, the employer elected not to provide firsthand, sworn testimony but to rely on hearsay during the hearing on this matter. While hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds that the claimant's testimony is not inherently improbable and, therefore, concludes the employer has not sustained its burden of proof in establishing conduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 22, 2011, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs