

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE A BARNES
Claimant

APPEAL NO. 11A-UI-00875-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNA ENTERPRISES
Employer

**OC: 12/19/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 19, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 24, 2011. Claimant participated personally and by Kim Allgood. Employer participated by Bill Van Sloun. The claimant's request at the beginning of the hearing for a continuance to add six additional witnesses was denied as untimely.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant was discharged on or about October 8, 2010. The site where the claimant was to report had no one there when he first attempted to report on October 5, 2010. This had happened before. The claimant was told that the employer would check and see what was going on. The employer did not get back to the claimant. When the claimant called the employer on October 8, 2011, he was told he no longer had a job.

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.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant was discharged for a series of delays and cancellations at an assignment that led claimant to believe that he was to wait for a call of when to report.

DECISION:

The decision of the representative dated January 19, 2011, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/kjw