

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUGUST K WELTHA
Claimant

APPEAL NO. 11A-UI-10149-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE HEALTH FACILITIES XVII
Employer

OC: 07/03/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated July 27, 2011, reference 01, which denied unemployment insurance benefits. After due notice, a telephone hearing was held on August 24, 2011. Claimant participated personally. The employer participated by Mr. Randy Menniga, Maintenance Director.

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: August Weltha was employed by Pinnacle Health Facilities XVII from July 2009 until July 6, 2011 when he was discharged from employment. Mr. Weltha most recently worked as a full-time maintenance supervisor and was paid by the hour. His immediate supervisor was Randy Menniga.

Mr. Weltha was discharged on July 6, 2011 because the facilities administrator, Debby Baker, was dissatisfied with the progress that the claimant was making in completing items that the fire marshall had tagged as unacceptable. Mr. Weltha had been given a list of items that had been tagged by the fire marshall and was attempting to implement changes that had been required. Although the claimant had not been given any direction as to the priorities that were to be followed in making the corrections and had not been warned, he nevertheless was discharged when the facilities administrator felt that satisfactory progress was not being made. Claimant was attempting to make the required repairs to the best of his ability and was not aware that his employment was in jeopardy at that time.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

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 upon such past acts. The termination of employment must be based on a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer fails to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this matter Mr. Weltha testified that he attempted to perform his duties to the best of his abilities and was unaware that the facilities administrator was dissatisfied with his progress or that his employment was in jeopardy. Claimant testified that he was making repairs and attempting to prioritize them as best possible and did not know until the time that he was discharged that the employer was dissatisfied with his progress or the method that he was following. The employer's witness was generally unaware of the basis for the claimant's termination from employment.

The administrative law judge concludes based upon the evidence in the record that the employer has not sustained its burden of proof in establishing intentional, disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated July 27, 2011, reference 01, is reversed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs