

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 4, 2004, as a full-time production worker. The claimant received a copy of the employer's handbook. The handbook indicates an employee should report an absence prior to the start of his shift. The employer issued the claimant a written warning on July 5, 2005, for excessive absenteeism. The claimant was not properly reporting his absences.

On July 27, 2005, the claimant was incarcerated as a result of a raid. No charges were filed against the claimant and he was released on July 28, 2005. The claimant did not report to work or notify the employer of his absence on July 27, 2005. On July 28, 2005, the employer suspended the claimant from work until he provided some documentation of his incarceration. The employer suspected the claimant was never incarcerated. The claimant spoke with a jailer and a secretary at the county attorney's office but did not receive any paperwork. He did not ask the city attorney or the judge. He did not look at the copy of his court file or speak with a court reporter or court attendant. On August 5, 2005, the employer terminated the claimant for attendance.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). The claimant failed to follow instructions regarding his attendance. He failed to follow instructions regarding providing documentation of his incarceration even when he knew his employment depended on his actions. An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by failing to follow instructions and provide documentation. The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's September 8, 2005 decision (reference 05) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

bas/s