

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL F KITCHEN**  
Claimant

**APPEAL NO. 12A-UI-13117-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CROSSROADS OF WESTERN IOWA**  
Employer

**OC: 10/07/12  
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Crossroads of Western Iowa filed a timely appeal from a representative's decision dated October 29, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on December 4, 2012. Claimant participated. The employer participated by Ms. Kim Coffelt, Lead Residential Coordinator; Ms. Jamie Barnum, Director of Residential Services; and Ms. Jackie Collins, Director of Human Resources.

**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: Paul Kitchen was employed by Crossroads of Western Iowa as a full-time residential coach from August 15, 2011 until March 7, 2012 when he was discharged for failure to follow company policy. Mr. Kitchen was paid by the hour. His immediate supervisor was Ms. Kim Coffelt.

Mr. Kitchen was discharged on March 7, 2012 after the claimant admitted that he had criminal charges pending against him for a drug crime and made statements that the employer considered were an admission that the claimant had altered a prescription to obtain prescription drugs without authorization.

Because the claimant had received numerous warnings and a suspension for failure to follow other Crossroads' policies and because the company's Human Resource policy specifically requires employees to report if they have been charged with drug offenses within five days, a decision was made to terminate Mr. Kitchen. The claimant had been charged with altering a prescription some three months prior to his disclosure on March 7, 2012. In addition to the claimant's failure to report the charges as required by company policy, the employer was concerned that due to the nature of his offense, developmentally disabled individuals under

Mr. Kitchen's care might be vulnerable if the claimant sought prescription drugs that were in their possession.

It is the claimant's position that he was unaware of the requirement that he report any criminal charges that had been brought against him. Mr. Kitchen reported the matter on March 7, 2012 because he believed doing so would result in assistance from the employer.

### **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.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. 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).

In this matter the evidence establishes that the employer had a policy that required employees to report any drug charges that had been brought against them within five days of the charges being brought. Mr. Kitchen had received a copy of the company's handbook and had

acknowledged its receipt. Because the claimant had failed to follow the specific policy that required him to report the charges within five days and because the claimant had been previously warned on a number of occasions and previously suspended, a decision was made to terminate Mr. Kitchen from his employment. The employer also had legitimate concerns that based upon the nature of the offense, they could be placing clients in jeopardy if they allowed the claimant to continue to perform services for them due to what the employer considered to be a possibility that the claimant might engage in misappropriating other prescription drugs.

The administrative law judge concludes that the claimant's failure to report the charges brought against him within the time period prescribed by the employer showed a disregard of the employer's interests and standards of behavior that the employer had a right to expect. Claimant knew or should have known that he had the requirement to report the charges but did not do so. Unemployment insurance benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The representative's decision dated October 29, 2012, reference 01, is reversed. Claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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