

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN W MEHAFFY
Claimant

APPEAL NO. 09A-UI-03038-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RABINER TREATMENT CENTER
Employer

OC: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Ryan Mehaffy filed an appeal from a representative's decision dated February 19, 2009, reference 01, which denied benefits based upon his separation from Rabiner Treatment Center. After due notice was issued, a hearing was scheduled for and held on March 24, 2009. Mr. Mehaffy participated personally. The employer participated by Michelle Hammersland, Director of Human Resources. Employer's Exhibits One through Five were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Rabiner Treatment Center from August 5, 2008 until January 28, 2009. The claimant worked as a youth counselor assigned to work at a residential cottage for at risk juvenile males.

A decision was made to terminate the claimant based upon complaints from staff and a review of company security tapes regarding an incident that had occurred on January 28, 2009. On that date the claimant and another youth counselor were attempting to provide supervision to approximately nine adolescents at a Rabiner Treatment Center cottage. The security tape showed a number of youths acting inappropriately, dancing and doing pushups on a desk. The tape also showed what appeared to be Mr. Mehaffy horseplaying with a male resident and subsequently the male resident jumping onto Mr. Mehaffy's back. The employer upon reviewing the tape considered Mr. Mehaffy's supervision to be unacceptable and a decision was made to terminate the claimant based upon that incident and because the claimant had been previously warned for other incidents in which the employer believed that he had not exercised sound discretion and judgment. The claimant had been warned in the past for exercising poor judgment in bringing personal golf clubs to a cottage to allow clients to hit balls, playing an audio

recording of a client's statements, and showing pictures of his sister to clients on a personal laptop. The claimant also on one occasion had taken clients to a "burn pile" on campus while they were under his supervision. Based upon the training that had been provided to Mr. Mehaffy, the employer concluded that he was not demonstrating the skills necessary to perform his duties as a youth counselor and not following the company's expectations regarding safety and supervision of clients. Although youth counselors are expected to interact with clients and clients' family members, they are expected to promote a clinical atmosphere and professional image. Horseplay, wrestling, rough housing, swearing or provoking residents are prohibited by policy. Mr. Mehaffy had received a warning from his employer on November 4, 2008 due to the claimant's lack of understanding the employer's expectation and treatment concepts. The claimant was discharged when the employer believed that he had continued to demonstrate the inability to function at the level of competency expected by the employer.

During the incident in question Mr. Mehaffy was attempting to maintain order with the assistance of another youth counselor who also had been employed less than six months. The claimant did not believe that he was engaging in horseplay but only interaction with a client before the client "jumped on his back."

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Mehaffy was discharged for intentional misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

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. Misconduct serious enough to warrant a discharge of an employee may not be necessarily serious enough to warrant a 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 the 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).

The evidence in the record establishes that Mr. Mehaffy had been counseled in the past for what the employer considered to be the claimant's failure to understand the concepts of his role as a professional youth counselor. (See Exhibit One). Mr. Mehaffy had engaged in a number of acts that the employer considered to be matters of poor judgment including bringing golf clubs to a cottage, playing an audio recording of a client back to the client, showing pictures of a family to clients and allowing clients to go to a burn pile as a supervised group. It appears that Mr. Mehaffy felt that these actions were not in violation of any of the employer's safety or procedural rules and his intent was to facilitate the interaction between himself as a youth counselor and the individuals that he was counseling. It appears that Mr. Mehaffy attempted to explain reasons for his actions at the time that he was issued a warning on these matters. Subsequently, a decision was made to terminate Mr. Mehaffy when a videotape showed that Mr. Mehaffy and another inexperienced counselor were not maintaining the expected level of control over clients in the cottage. No supervisory personnel were at the cottage that day and both Mr. Mehaffy and the other worker were inexperienced being employed by the company for less than six months.

Based upon the claimant's testimony it is clear that Mr. Mehaffy viewed the situation at the cottage differently. The claimant it appears does not believe that he was interacting improperly with the adolescents and engaging in horseplay. The claimant testified that he was unaware of some of the other activities that were viewed on the security cameras and testified that he was following the cottage procedures as outlined to him by his supervisor.

It is the opinion of the administrative law judge based upon the totality of the hearing record that the claimant was discharged based upon his inability to function at the reasonable level of competence expected by the employer. Although the claimant had been trained and warned, he was unable to grasp the necessity of acting as a role model and enforcer of the organization's rules and expectations. The claimant believed he was acting appropriately by interacting with the youths and was unable to maintain the level of decorum expected by his employer due to his inability to recognize the employer's expectations.

The question before the administrative law judge in this case is not whether the employer has a right to discharge Mr. Mehaffy for these reasons but whether the discharge is disqualified under the provisions of the Iowa Employment Security Act. While the decision to terminate Mr. Mehaffy was a sound decision from a management viewpoint, the administrative law judge concludes based upon the evidence in the record that the claimant's discharge was not the result of intentional disqualifying misconduct but due to the claimant's inability to perform at the reasonable level of competence expected by the employer. The claimant did not grasp his job responsibilities and thus was unable to execute them competently.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged due to lack of ability. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 19, 2009, reference 01, is reversed. The claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs