

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS HARBAUGH

Claimant

APPEAL NO: 07A-UI-07168-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP

Employer

**OC: 02-25-07 R: 06
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 16, 2007, reference 06, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 9, 2007. The claimant participated in the hearing. Wendy Carpenter, Security Coordinator and Kelvin Moore, Site Project Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time security officer for Per Mar Security & Research from May 9, 2007 to June 14, 2007. The claimant became ill after touring the Duane Arnold Nuclear Plant where he was assigned to work. He called Security Coordinator Wendy Carpenter and asked about other positions and Ms. Carpenter told him to call Kelvin Moore, Site Project Manager, and tell him about the situation. Mr. Moore told him if he could not work at the plant site he would need to turn in his badge and uniforms because the plant wore different badges and uniforms than the downtown workers and consequently he returned his uniform and badge the next day. The claimant called Ms. Carpenter back and she told him she had part-time but not full-time work available. He called her the following Monday and left four or five messages asking about other positions. He changed his phone number shortly after being hired and notified Mr. Moore but the Duane Arnold site and the downtown office do not share that type of information and although the claimant called Ms. Carpenter several times she did not have the correct phone number when she did attempt to return his call. The parties did speak on June 18, 2007, and Ms. Carpenter indicated she would have to talk to someone else about another position for the claimant and would get back to him but when the claimant did not hear from Ms. Carpenter for one to two weeks he looked for and obtained another job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). While the claimant was unable to work at the Duane Arnold Plant he did not wish to leave the company. He asked Ms. Carpenter about other jobs and followed up with her about another position but she did not call him back because of a mix-up with his phone number. The claimant did provide his new phone number to Mr. Moore and it is not unreasonable that the claimant might not have understood that did not mean Ms. Carpenter would not have access to his new number. The claimant waited for the employer to contact him about another position but when he did not hear from it he sought other employment. He did not intend to quit his job and the employer has not established any misconduct on his part. Therefore, benefits must be allowed.

DECISION:

The July 16, 2007, reference 06, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs