

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIEL MARTINEZ
Claimant

APPEAL NO: 07A-UI-06967-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE EASTER SEAL SOCIETY OF IA INC
Employer

OC: 06/03/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Gabriel Martinez (claimant) appealed a representative's July 17, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with the Easter Seal Society of Iowa, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 1, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 18, 2006. He worked full time as a team leader for the employer's respite program and the employer's life club program in providing services to persons with disabilities. His last day of work was June 4, 2007. The employer discharged him on that date. The reason asserted for the discharge was insubordination.

At approximately 11:00 a.m. on June 4 the claimant's supervisor summoned him to meet with her. During the meeting the supervisor presented the claimant with a written disciplinary action and asked him to sign it. He responded that he was not going to sign it at that time as he did not agree with the allegations made in the warning, but rather told her that he would come back later on and give her his written response to the write up. The supervisor responded that she would have to see what the next step would be since he had not signed the warning.

At approximately 2:30 p.m. the claimant was summoned to meet with the supervisor and a representative from human resources. He brought with him the written response he had made to the allegations in the write-up. However, when he arrived for the meeting he was told that he was discharged at that time because he had not signed the warning; he was not allowed to turn in his written response, and there was no further discussion as to whether he could sign the warning at that time. The warning presented to him on June 4 was the first disciplinary action issued to the claimant by the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Refs 14, 15

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:

- a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
- a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is insubordination for failing to sign a disciplinary action. In Green v Iowa Department of Job Service, 299 N.W.2d 651 (Iowa 1980), the Iowa court ruled that failure to acknowledge the receipt of a written reprimand by signing it can constitute work-connected misconduct as a matter of law. The Green case, however, is distinguishable on the facts. In Green, the claimant knew signing the reprimand was merely acknowledging receipt of it and her supervisor warned her that she would be discharged if she did not sign it. In this case, neither the written reprimand or the claimant's supervisor informed the claimant that his signature was merely an acknowledgement of receipt of the reprimand and did not constitute agreement with the contents. The supervisor did not warn the claimant that a refusal to sign would jeopardize his employment. Consequently, the claimant's failure to sign the document was not a willful act or omission constituting a material breach of his duties and obligation to the employer. Under the circumstances, the claimant's failure to sign the reprimand was an isolated good faith error in judgment not intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 17, 2007 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

Id/