

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN R VARCOE
Claimant

APPEAL NO. 09A-UI-07051-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 04/05/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.6-2 – Burden of Proof

STATEMENT OF THE CASE:

John R. Varcoe filed a timely appeal from an unemployment insurance decision dated May 4, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held May 26, 2009 with Mr. Varcoe participating and being represented by John D. Brown, Attorney at Law. Prior to the date of the hearing, the employer, Good Samaritan Society, Inc., advised the administrative law judge that it did not intend to participate in the hearing.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: John D. Varcoe was employed by Good Samaritan Society, Inc. from 1986 until he was discharged April 8, 2009. Mr. Varcoe was a registered nurse. He was the supervisor on the night shift of a nursing home operated by the employer. He was discharged because of complaints made by a co-worker that he was abusive to staff and residents. He was not.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does not.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the claimant was discharged because of a current act of misconduct. See 871 IAC 24.32(8). As noted above, the employer did not participate in the hearing. The claimant's testimony does not establish misconduct. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 4, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs