

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRED R MARVELLI
Claimant

APPEAL NO. 06A-UI-08367-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

**OC: 07-23-06 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 16, 2006, reference 01, decision that denied benefits. After due notice was issued, an in-person hearing was held on October 9, 2006 at Des Moines, Iowa. The claimant did participate and was represented by Robert Oberbillig, Attorney at Law and Drake Legal Clinic student attorney Veronica Franck. The employer did participate through (representative) Jeanny Alger, Human Resources Business Partner and Mike Wilwol, Manager of Public Safety. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged for work-related misconduct?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was employed as a public safety officer full time beginning November 18, 1998 through July 20, 2006 when he was discharged.

On June 22, 2006 the employer received a complaint that the claimant had allowed an unauthorized person to pass into the emergency room without first passing through the metal detectors. The claimant's supervisor, Mr. Wilwol, was made aware of the allegation on June 22 and viewed the surveillance video tape showing the unauthorized person entering the emergency room on that same day. Mr. Wilwol made the decision to discharge the claimant for the violation and forwarded his determination and the necessary paperwork to Ms. Alger on June 23. The employer took no further investigative steps after Mr. Wilwol reviewed the surveillance video on June 22, yet the claimant was not told he was discharged until July 20 some four weeks after the alleged violation occurred. The employer has not established any reasonable explanation to explain why they delayed for four weeks in discharging the claimant. The claimant was never interviewed to discover his version of events. At hearing the employer made it clear that the decision to discharge the claimant was made prior to any allegation of his spreading rumors or disrespectful comments about another coworker to new employees. The decision to discharge the claimant was made on June 22 and no new information was discovered thereafter because no additional investigation was conducted after June 22.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance

benefits. Such misconduct must be “substantial.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The employer has provided no reason why they delayed four weeks in discharging the claimant for an alleged violation on June 22. It is clear that no additional investigation was undertaken by the employer to justify their delay. A discharge for misconduct must be based on a current act of misconduct. The administrative law judge concludes that an alleged act of misconduct that is four weeks old is not a current act of misconduct. Inasmuch as the employer has not established a current or final act of misconduct, benefits are allowed.

DECISION:

The August 16, 2006, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs