

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A LANG
Claimant

APPEAL NO. 07A-UI-04640-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 04/15/07 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 30, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 23, 2007. Claimant participated personally. Employer participated by David Bergeon, Human Resource Specialist and Von Stange, Director of University Housing. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 23, 2007.

Claimant was discharged on April 11, 2007 by employer because claimant could not perform the essential function of his job pursuant to a voluntary pretrial release agreement.

Claimant was arrested in Minnesota on March 19, 2007. Claimant was incarcerated as a result of the arrest and pending criminal charges. As a condition of his release from incarceration, claimant voluntarily signed a pretrial release order indicating that he could have no unsupervised contact with minors. Claimant worked as a cook on the University campus. Claimant would have daily if not hourly contact with minors while performing the essential functions of his job. The employer was not able to supervise the contacts and thereby terminated the employment relationship.

Claimant had the name and telephone number of the pretrial release representative. Claimant did not attempt to solicit testimony from the representative for use at hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning the ability to perform the essential functions of the job.

The last incident, which brought about the discharge, constitutes misconduct because claimant voluntarily entered into an agreement that disqualified him from work. Claimant's guilt or innocence is irrelevant for purposes of this proceeding. Claimant is presumed innocent. What is clear is that claimant volitionally signed a pretrial release order that prohibits him from

unsupervised contact with minors. This was a conscious decision on the part of claimant. The argument that he has no unsupervised contact as expressed by the pretrial release officer is not adequate to prove the theory. Claimant provided no documentation to prove that the order does not apply to his job as a cook. Claimant had the name and telephone number of the pretrial release officer yet did not list the individual as a witness. Nor did claimant seek out the officer's voluntary participation at hearing. Nor did claimant ask that a subpoena be issued to compel attendance at the telephone hearing.

The conclusion is that claimant was discharged for misconduct as defined by Iowa law when he voluntarily and with full knowledge disqualified himself from his position as a cook. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 30, 2007, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css