

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN Y RUDOLPH
Claimant

APPEAL NO. 09A-UI-05171-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HCM INC
Employer

OC: 03/08/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

HCM, Inc. filed a timely appeal from an unemployment insurance decision dated March 26, 2009, reference 01, that allowed benefits to Justin Y. Rudolph. After due notice was issued, a telephone hearing was held April 29, 2009 with Mr. Rudolph participating. Maintenance Supervisor John Freeman participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Justin Y. Rudolph was employed by HCM, Inc. from July 22, 2008 until he was discharged March 2, 2009. He last worked part time as a dietary aide and housekeeper. The final incident leading to his discharge occurred on February 28, 2009. Mr. Rudolph spent approximately 45 minutes out of a four-hour shift waiting in the break room as CNAs moved residents from the dining room area back to their rooms. Mr. Rudolph completed all of his duties that day but in retrospect felt that he could have done a better job.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for disqualifying misconduct. 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 final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The employer's witness acknowledged that he was not present on February 28, 2009. He assumed that Mr. Rudolph could not have completed all of his duties. Mr. Rudolph, speaking from first-hand knowledge, testified that he had completed all duties while acknowledging that in retrospect he probably could have done a better job. The administrative law judge does not find willful misconduct in this evidence. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated March 26, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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