

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANNY K KEUCK
Claimant

HARLAND HARDWARE INC
Employer

APPEAL NO: 11A-UI-12283-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/21/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
871 IAC 24.32(8) – Current Act

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 14, 2011, reference 01, that held he was discharged for misconduct on August 21, 2011, and benefits are denied. A telephone hearing was held on October 12, 2011. The claimant participated. Ron Harland, President participated for the employer. Claimant Exhibit A and Employer Exhibit 1 were received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 1, 2003, and last worked as a full-time store manager on August 22, 2011. The employer issued claimant a letter of reprimand on June 13, 2011. The employer reduced claimant's salary by \$5,000.00. One of the instructions is that claimant take a regular rotation in closing the store on Friday nights in accordance with how many key holds regularly close on Friday night. The claimant worked with three key holders.

Claimant prepared and posted the work schedule. He did schedule himself to close on a Friday night in July, but due to other key holder requests to adjust it, he did not work any Friday. He posted the weekly schedule at the work place that was observable to employees and management. He was discharged by the employer on August 22 for failing to work and close on a Friday night.

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.

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 administrative law judge concludes the employer has established that the claimant was discharged for a current act of misconduct in connection with employment on August 22, 2011.

The instruction given claimant to close on a regular rotation the store on Friday nights does not state every third week and it was one of three that applied to scheduling. Since claimant tried to schedule a Friday night close in July, he had accepted the directive and was trying to comply. The work schedule was posted and the employer said nothing to claimant about the directive up to discharge. Failing to close on a Friday night is not insubordination and job disqualifying misconduct given the vagueness of the directive and claimant's attempt to comply.

DECISION:

The department decision dated September 14, 2011, reference 01, is reversed. The claimant was not discharged for a current act of misconduct on August 22, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css