

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSH M SCHROEDER
Claimant

JENSEN BUILDERS LTD
Employer

APPEAL 18A-UI-05522-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/15/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 7, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on June 6, 2018. Claimant participated. Employer participated through human resource director Tom Nelson. Claimant's Exhibit A was received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time carpenter since 2012. The separation date was April 16, 2018. Claimant was directed to drive a company truck from Fort Dodge to help on a job in Des Moines. On the way, he began to have a panic attack. He pulled off at the Jewell, Iowa, exit. The next thing he remembered was being at the hospital in Clarion, north of Fort Dodge. He was diagnosed with a panic attack and administered two shots of Advan to relax him so he was unable to drive. The medical record noted a history of "methamphetamine abuse." (Claimant's Exhibit A) Claimant denied having used meth since January 2018, and was prescribed medications resperidone¹ (antipsychotic), ambien (for insomnia).² The hospital notified the employer, which sent Nate Gellus³ and someone else retrieved the truck and gave claimant a ride home, and fired him, saying, "This is where we part ways." The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

¹ Drugs.com

² He followed up with his physician and those medications were substituted with Paxil (for depression and anxiety) and trazodone (anti-depressant).

³ Gellus did not participate at hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Admin. Code r. 871-24.32(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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). ...the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871-24.32(1)(a) (emphasis added).

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The conduct for which claimant was discharged was related to a medical condition and was not within claimant's control. Accordingly, the employer has not met the burden of proof to establish that claimant acted deliberately in violation of company policy, procedure, or prior warning.

DECISION:

The May 7, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs