

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GEOFFREY C WHITLOW
Claimant

APPEAL NO. 11A-UI-12607-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARKING INC
Employer

OC: 08/28/11
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Geoffrey C. Whitlow filed a timely appeal from an unemployment insurance decision dated September 16, 2011, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa October 31, 2011 with Mr. Whitlow participating. Exhibit A was admitted into evidence on his behalf. Vice President Todd Pugh, Operations Director Will Hays and Airport Lot Manager Thom Wierenga participated for the employer, Parking, Inc. Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

FINDINGS OF FACT:

Geoffrey C. Whitlow was employed as a shuttle driver by Parking, Inc. from March 19, 2003 until he was discharged August 28, 2011. The events causing the discharge occurred on August 18, 2011. Over the course of approximately one hour, Mr. Whitlow engaged in a series of face to face and telephone confrontations with the night auditor of the Comfort Inn Des Moines Airport. The night auditor had called several times to inquire if Mr. Whitlow was on schedule to make a pick up at the Comfort Inn. The calls did not go directly to Mr. Whitlow but to the cashier on duty.

The night auditor complained to her supervisor who in turn complained to the Inn's general manager. The general manager spoke with Operations Director Will Hays. Mr. Hays indicated that Mr. Whitlow would not be picking up guests at the Comfort Inn. The Inn's general manager stated that he did not wish to have Mr. Whitlow return to the Inn ever again.

Mr. Whitlow has bi-polar II mood disorder. Parking, Inc. is aware of his medical condition. A few hours after the incident, Mr. Whitlow sent an email to Mr. Hays requesting a week's time off to deal with personal and medical matters. Mr. Hays allowed the time off. Mr. Whitlow was discharged on the Sunday before he was to return to work at midnight on Monday.

REASONING AND CONCLUSIONS OF LAW:

The question is not whether the employer was justified in discharging Mr. Whitlow. It is whether the discharge was for misconduct as that term is defined for unemployment insurance purposes. For the reasons that follow, the administrative law judge concludes that the separation was not a disqualifying event.

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 evidence in the record persuades the administrative law judge that the employer was fully aware of the situation on the morning of August 18, 2011, prior to Mr. Hays granting Mr. Whitlow's leave request. The employer then waited an additional ten days to discharge Mr. Whitlow. The administrative law judge concludes that the final incident was not a current act as of the date of discharge. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated September 16, 2011, reference 01, is reversed. 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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