

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA P COBB

Claimant

APPEAL NO. 09A-UI-04761-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES

Employer

OC: 02/15/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge/Misconduct

Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Care Initiatives filed a timely appeal from a representative's decision dated March 17, 2009, reference 01, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 22, 2009. The claimant participated personally. Witness Cheryl Reuw was not available. The employer participated by Jennifer Coe, Hearing Representative and witnesses Cheryl Rouse, Dietary Manager and Jody Seddon, Assistant Director of Nursing. Employer's Exhibits One through Three were received into evidence.

ISSUES:

At issue in this matter is whether the claimant was discharged for misconduct and whether the claimant is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was employed as an evening full-time cook for the captioned care facility from December 5, 2007 until February 11, 2009 when he was discharged from employment.

The claimant was discharged after he left the care facility during the evening shift of February 11, 2009 before the end of his work shift and without permission to do so. Under established company policies employees who leave a work shift without authorization are considered to have abandoned their job and are subject to separation from employment. The company policy is enumerated in the company handbook and Mr. Cobb received a copy of the handbook and acknowledged its receipt.

On the evening of February 11, 2009 the claimant received a final written warning from Jody Seddon, Assistant Director of Nursing. The claimant was warned for failing to monitor the food intake of residents as required. The claimant had been warned before. Upon receiving the

warning the claimant became angry and called his immediate supervisor at home to state that he was leaving. The claimant did not request permission or receive permission to leave the work shift that evening. Upon review of the events, a decision was made to terminate the claimant for leaving work without authorization.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes misconduct sufficient to disqualify the claimant from the receipt of unemployment insurance benefits. It does

Here the evidence establishes that the claimant became angry after receiving a written warning for failing to perform an essential job function. The claimant did not receive permission to leave nor ask for permission but instead informed his supervisor that he was leaving. The claimant left prior to the end of the work shift in violation of a known company rule. The claimant was aware that employees that violate the rule are subject to termination from employment. Upon reviewing the facts a decision was made to terminate Mr. Cobb from his employment with Care Initiatives.

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.

For the reasons stated herein the administrative law judge concludes that the employer has sustained its burden of proof in establishing that the claimant was discharged for misconduct in connection with his work. Benefits are withheld.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated March 17, 2009, reference 01, is reversed. Joshua Cobb is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, providing that he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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