

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID JACKSON
Claimant

APPEAL NO. 06A-UI-11107-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AIMCO/BETHESDA HOLDINGS INC
Employer

**OC: 10/08/06 R: 04
Claimant: Respondent (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Aimco/Bethesda Holdings (employer) appealed a representative's November 6, 2006 decision (reference 02) that concluded David Jackson (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 8, 2006. The claimant participated personally. The employer participated by Marti Helm, Property Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on May 12, 2006, as a part-time custodian. The claimant lived on site and was given a company telephone and keys. The employer issued the claimant verbal warnings for poor performance and inappropriate behavior. The claimant said he cleaned the hallways but did not every time. He did not always dispose of the trash that was on the property.

On May 20, 2006, the claimant was under the influence of alcohol and on the property looking for the company's telephone and keys that he had lost. He reported to security that the items were missing. On July 7, 2006, the claimant and his girlfriend were in a domestic situation which required the intervention of law enforcement. The girlfriend was holding a knife and the claimant was holding a hammer while involved in a heated discussion. The girlfriend was banned from the property. The employer informed the claimant that the girlfriend was banned. The following day the girlfriend came on the property to get her clothing. The claimant allowed the girlfriend on the property.

On July 24, 2006, the claimant brought a female on the property that security recognized as the girlfriend. The claimant continued to fail to clean properly. On July 27, 2006, the employer terminated the claimant for failure to follow instructions after repeated warnings.

The testimony of the employer and claimant was inconsistent. The administrative law judge finds the employer's testimony to be more credible because the claimant's testimony was internally inconsistent.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to conduct themselves in a certain manner. The claimant disregarded the employer's right by repeatedly failing to follow instructions regarding job performance and appropriate behavior.

The claimant's disregard of the employer's interests is misconduct. As such he is not eligible to receive unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. 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.

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.

The claimant has received benefits in the amount of \$455.00 since filing his claim herein. Pursuant to this decision, those benefits now constitute an overpayment which must be repaid.

DECISION:

The representative's November 6, 2006 decision (reference 02) is reversed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times he weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$455.00.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css