

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LARRY EDWARDS
Claimant

MARSDEN BLDG MAINTENANCE LLC
Employer

APPEAL NO. 19A-UI-07840-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/02/19
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 7, 2019, reference 05, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 7, 2019. Claimant participated personally and with attorney Elizabeth Norris. Employer participated by hearing representative Jackie Boudreaux and witness Jeff Howard.

ISSUE:

The issue in this matter is whether 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: Claimant last worked for employer on September 9, 2019. Employer discharged claimant on September 12, 2019 because claimant had allegedly left a door propped open, a deadbolt not set, and an alarm not turned on after claimant had been warned less than a week earlier for not setting the same alarm.

Claimant worked as an evening cleaner for employer. Claimant was assigned to clean a number of banks in Iowa City. In August, 2019 claimant was assigned to clean the Towncrest US Bank. On September 4, 2019 employer was alerted that after the cleaning done by claimant on September 3, 2019 an alarm was not set, a door was left open, and a deadbolt was not locked. Employer met with claimant on September 4, 2019 and alerted him as to his errors and the need to be sure to shut and lock doors and set alarms before leaving.

Employer was alerted on Monday, September 9, 2019 that the alarm was not set, a door was ajar and a deadbolt not set over the weekend for the Towncrest bank claimant had cleaned on Friday. US Bank asked that claimant not clean their banks any more. Claimant was terminated for this alleged action.

Claimant stated that he did not forget to turn the alarm on, leave a door ajar, or forget to set a deadbolt. Claimant further stated that he believed that he'd parked a vehicle close to a bank

employee's vehicle on Friday, and as a result the bank represented that claimant had not secured the building.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

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 disqualification shall continue 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. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning properly securing the facility he was working in. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because employer was immediately contacted upon the client entering the bank facility on Monday. This indicates an actual action, and not the malicious action of a worker upset that a car had been encroached upon by claimant's work vehicle. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated October 7, 2019, reference 05, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn