IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number: 05A-UI-04130-BT
OC: 03/27/05   R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319***.

DAVID S BROWN
1320 PLEASANTVIEW DR
DES MOINES IA 50315

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

MERCY HOSPITAL
ATTN HUMAN RESOURCES
1055 – 6TH AVE STE 105
DES MOINES IA 50314

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Brown (claimant) appealed an unemployment insurance decision dated April 14, 2005, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Mercy Hospital (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 10, 2005. The claimant participated in the hearing. The employer participated through Ron Robertson, Employee Relations Coordinator and Todd Beveridge, Director of House of Mercy. Employer's Exhibits One through Three were admitted into evidence.

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 as a full-time program evaluator on May 6, 2002 and was promoted to a data system specialist. He continued his employment until he was discharged on March 24, 2005, for unethical behavior. The claimant was discharged after he misrepresented the employer and used his professional position for personal gain. As part of his job duties, the claimant met with former House of Mercy clients. He made an arrangement with the Iowa Correctional Institution for Women to visit inmates that are former clients. He was sent monthly lists of the new arrivals. On March 11, 2005, the claimant visited four women at the correctional facility. Before going to the facility, he notified the staff as to which inmates he wanted to visit. One of the women he visited that day was not a former client of the House of Mercy but a personal friend of the claimant's. The claimant had included her name on the list of inmates he needed to visit without specifying that she was not a former client.

The inmate talked to other inmates at the correctional facility about what the claimant had done and a correctional officer overheard the comments. The inmate subsequently provided verbal and written statements confirming the claimant had visited her on the basis that she was a former client. She indicated she and the claimant had a personal relationship. The inmate stated the claimant had made a file for her and had even asked her some of the same questions he asked the former clients. Once the Deputy Warden became aware of this information, she contacted the employer on March 18, 2005, banned the claimant from the facility and discontinued the program with House of Mercy. The employer conducted an investigation and discovered not only that the information was accurate, but also that the claimant had visited this same inmate while she was in the Polk County jail.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. 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 section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant admitted that he visited an inmate at the Iowa Correctional Institutional Facility that was not a former client and with whom he had a personal relationship. He did this while he was being paid by the employer and when he was at the facility specifically for work-related purposes. The claimant contends that he never claimed the inmate was a former client. However, since he omitted the information that she was not a client and was instead a personal friend, his actions were just as fraudulent. The claimant states he made a mistake but a mistake implies a lack of intent. His actions in achieving his personal objective to visit his friend were very calculated. The claimant's actions were detrimental to the employer in that they are no longer able to interview inmates who are former clients. The claimant's conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated April 14, 2005, reference 01, is affirmed. 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 been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/pjs