

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIM L YAMBOR**  
Claimant

**APPEAL NO. 12A-UI-10126-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WARREN DISTRIBUTION CO**  
Employer

**OC: 07-22-12**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 15, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2012. The claimant did participate and was represented by his friend Julie Hilario-Herrin. The employer did participate through (representative) Amanda Lewis, Wellness and Benefits Coordinator; Helen Adamson, Director of Human Resources; Scott Anderson, Distribution Operations Manager; Jason Larsen, Picking Preparation Supervisor; Joe Rasmussen, Shipping Lead; David Wright, Picking Preparation Clerk; and Bill Hempel, Picking Preparation Clerk. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Was the claimant discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a picking prep clerk full time beginning September 17, 1992 through July 19, 2012 when he was discharged. The employer has an employee assistance program (EAP) as part of their company benefits and policies. Employees who either ask for or are told to attend EAP sessions are required to do so. The employer noted behavioral and physical changes in the claimant in the last months of his employment. The EAP sessions would have been completely confidential for the claimant. The claimant was specifically told in writing via a document he signed on July 17, 2012 that "[n]o information regarding the nature of the personal problem will be made available to supervisors, nor is it included in an associate's personnel file." The only information that would be released to the employer was whether the claimant attended the sessions and whether he followed the recommendation. The claimant was specifically told it was mandatory that he attend the sessions and that if he did not do so he would be discharged. The claimant was required to attend the sessions but did not do so. He was discharged for his failure to attend EAP and to follow the recommendations of the counselor. The administrative law judge is not persuaded that the claimant was told to attend EAP for any discriminatory reason. When the employer learned that the claimant had not attended his July 19, 2012 appointment, he was discharged.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is reasonable for an employer to require employees to attend EAP sessions. The claimant had demonstrated personality changes at work that led the employer to believe that he could benefit from their EAP program. The claimant was specifically told he had to attend the scheduled sessions. Nothing the claimant disclosed to the counselor would have been made available to the employer. This employer's EAP program did not violate any HIPAA laws. The claimant just simply did not want to go. The claimant told the employer he would attend the session and then did not go. He was obligated to do so. The claimant's refusal to attend the EAP sessions is misconduct sufficient to disqualify him from receipt of unemployment insurance benefits. Benefits are denied.

## DECISION:

The August 15, 2012 (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/css