

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DANIEL A LIPPERT
Claimant

APPEAL NO. 19A-UI-04446-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 05/05/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Daniel Lippert (claimant) appealed a representative's May 23, 2019, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with The University of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 26, 2019. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 August 19, 2016, as a full-time graduate student/teaching assistant. He was a Ph.D. candidate on track to complete his studies in five to six years. While working with his advisor, he also performed work as a teaching assistant and researcher for the employer.

Periodically, the claimant met with a committee comprised of his advisor and two other academicians. The advisor did not believe the claimant was making sufficient progress in his studies while the other two members thought he was. In October 2018, the advisor told the claimant he was to write a thesis and apply for a terminal master's degree. The advisor would not continue working with the claimant as he continued his studies toward a Ph.D. The claimant completed work on his master's degree at the end of February 2019.

The employer hired the claimant to work solely as a research and teaching assistant in the department of chemical engineering with an end date of May 10, 2019. On May 3, 2019, the employer sent the claimant an email notifying him that his employment as a graduate assistant would be terminated effective May 10, 2019. The claimant graduated in the spring of 2019 with

his master's degree. His last day of employment was May 10, 2019. The employer did not offer the claimant any other work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not participate in the appeal hearing and no evidence of misconduct was presented at the hearing. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 23, 2019, decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs