

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM P KNAPP
Claimant

APPEAL NO. 10A-UI-02813-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EVERGREEN REAL ESTATE
DEVELOPMENT CORPORATION**
Employer

**OC: 1/24/10
Claimant: Appellant (2)**

Section 96.5-2-A -- Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 19, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 19, 2010. Claimant participated. Employer participated by Steve King, Administrator, and Angela Adam, Executive Director. The record consists of the testimony of Steve King; the testimony of Angela Adam; and the testimony of William Knapp.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant worked for the employer at one of its properties: The Rose of Ames. The Rose of Ames provides affordable assisted living accommodations. The claimant was hired on June 6, 2007, as a cook. He was terminated on January 22, 2010.

No one incident led to the claimant's termination. The claimant was terminated for what the employer called "performance deficiencies and acts of misconduct." Among the examples given by the employer were failure to follow the menus; timeliness of serving; not always wearing gloves; and poor personal hygiene. The claimant also accepted a ride from a resident during a blizzard. This incident happened sometime in January.

REASONING AND CONCLUSIONS OF LAW:

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes mere inefficiency; unsatisfactory conduct or failure in good performance as the result of inability or incapacity. In order to justify disqualification, the evidence must establish that the final incident leading to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). See also Greene v. EAB, 426 N.W.2d 659 (Iowa App. 1988). The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant's job performance was not satisfactory to the employer. Although the claimant denied most of the employer's contentions about his job performance, his testimony was not credible, given the performance reviews and warnings cited by Mr. King. That being said, the greater weight of the evidence is that the employer discharged the claimant for continuing poor job performance, which is not misconduct under Iowa law. In order to disqualify the claimant from receiving unemployment insurance benefits, there had to be a showing of a current act of misconduct. No such showing was made. The employer had good business reasons for terminating the claimant, but those good business reasons are not misconduct for purposes of disqualification. Benefits are allowed.

DECISION:

The decision of the representative dated February 19, 2010, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css