

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BERNARD E WAGNER**  
Claimant

**APPEAL NO. 07A-UI-09684-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PICKWICK COMPANY**  
Employer

**OC: 09/16/07 R: 03  
Claimant: 09/16/07 (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 12, 2007, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on October 30, 2007. Claimant participated personally. Employer participated by Wendy Gasper, Human Resource Representative.

**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 having considered all of the evidence in the record, finds: Claimant last worked for employer on September 16, 2007.

Claimant was discharged on September 17, 2007 by employer because claimant left shift early. Claimant had a disagreement with his supervisor. Claimant was upset because his supervisor was yelling at him. Claimant was not capable of performing his job due to getting shaky from being yelled at. Claimant told his supervisor he was leaving to go home. The supervisor told claimant that he would receive discipline for leaving work early. Employer has no rule or policy on leaving work early. Claimant had no prior warnings on his record.

**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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning leaving work early. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct, because this is an isolated instance of poor judgment. Claimant had no warnings on his record. Claimant was not told that leaving early might jeopardize his job. Claimant had a good-faith basis to believe that he would just be written up over the ordeal. Furthermore, claimant was so upset that he could not do his job. This is similar to leaving work due to illness. In summary, the alleged policy violation was not an intentional violation of a known company rule with knowledge that discharge would result. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated October 12, 2007, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw