

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY J SMITH
Claimant

APPEAL NO. 08A-UI-06489-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLEN MEMORIAL HOSPITAL
Employer

**OC: 06/08/08 R: 03
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Cody J. Smith (claimant) appealed a representative's July 16, 2008 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Allen Memorial Hospital (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2008. The claimant responded to the hearing notice, but was not available for the scheduled hearing. Nathan Stucky, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer as a weekend charge nurse on March 11, 2008, at the Grundy Hospital. The claimant's supervisor was S.B. The claimant did not get along with S.B.

The employer owns Grundy Hospital. After the claimant began his employment, he applied for a position at Allen Memorial Hospital. The claimant wanted to transfer from the Grundy Hospital to Allen Memorial Hospital. After the claimant interviewed for the job transfer, the employer talked to the claimant on May 30. The employer talked to the claimant about inappropriate comments he made about S.B. Also, employees who had interviewed the claimant for the Allen Memorial Hospital position reported that the claimant had called them late at night, which they did not appreciate. The employer gave the claimant a one-day suspension for his inappropriate comments about his supervisor; told him he had to attend three mandatory sessions with an EAP counselor; he had to contact the EAP during the week of June 2 to schedule an appointment; and that he was not to contact either of the employees who had interviewed him again.

On June 2, the employer received information that the claimant called one of the employees who had interviewed him after 9:00 p.m. on May 31, 2008. On June 8, the employer learned the claimant had not called the week before to make an appointment with an EAP counselor. S.B. also reported that the claimant made an inappropriate comment to T., an employee.

On June 9, the employer discharged the claimant because he failed to make a timely appointment, he failed to follow the employer's instructions about not contacting anyone who had interviewed him, and he made an inappropriate comment to an employee.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence clearly establishes S.B. and the claimant did not get along. On June 2, S.B. reported that the claimant made a negative comment about her to a co-worker, D., on May 31. The facts do not establish that the reported comment to D. was negative or inappropriate. The fact the claimant did not make an appointment with an EAP counselor the week of June 2 does not rise to the level of work-connected misconduct. The claimant explained to the employer on June 9, that he had been very busy that week but intended to make the appointment the week of June 8. When the employer talked to the claimant, the employer had already made the decision to discharge him.

Since the claimant did not participate in the hearing, the evidence establishes that the claimant committed work-connected misconduct on May 31. Even though the employer specifically told the claimant on May 30 that he could not again contact or attempt to contact either employee who had interviewed him for a job transfer, the claimant deliberately failed to follow that instruction when he called one of the people who interviewed him after 9:00 p.m. on May 31. After the claimant received a one-day suspension, he knew or should have known his job was in jeopardy. The claimant's decision to call an employee who had interviewed him a day after the employer he could not contact amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. As of June 8, the claimant is not qualified to receive benefits.

DECISION:

The representative's July 16, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 8, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw