

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A FORD
Claimant

APPEAL NO. 09A-UI-15939-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

RED OAK REHAB & CARE CENTER INC
Employer

OC: 09/27/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michael Ford filed a timely appeal from a representative's decision dated October 19, 2009, reference 01, which denied benefits based upon his separation from Red Oak Rehabilitation & Care Center, Inc. After due notice a hearing was held in Council Bluffs, Iowa on November 19, 2009. Mr. Ford appeared personally. Appearing as witnesses were Mr. Sean Kearney and Ms. Pauline Kearney. Although duly notified the employer did not respond to the notice of hearing and did not appear at the hearing.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Michael Ford was employed as a part-time certified nursing assistant for Red Oak Rehabilitation & Care Center, Inc. from June 2007 until September 29, 2009 when he was discharged from employment. Mr. Ford was paid by the hour. His immediate supervisor was Lori Pratt.

Mr. Ford's employment with Red Oak Rehabilitation & Care Center, Inc. was terminated on September 29, 2009 when Mr. Ford called to verify that he was scheduled to work that evening. The claimant had been scheduled to work numerous graveyard shifts but had been sent home at the time of his arrival by his employer. Mr. Ford had reported for all scheduled work shifts. The claimant worked September 22 as scheduled. On September 25, 2009, the claimant reported as scheduled but was sent home.

When Mr. Ford spoke with his supervisor, Ms. Pratt, on September 29, 2009 prior to the beginning of his work shift, he was informed that no further work was available to him because he had "voluntarily terminated himself last week." Mr. Ford had not given the employer any indication of a desire to leave employment and had not engaged in any conduct that was contrary to the employer's rules, interests or standards of behavior. Based upon the statements

made by his immediate supervisor, the claimant reasonably considered himself to be terminated from employment. Mr. Ford opened a claim for unemployment insurance benefits and began seeking employment with other perspective employers.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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.

The evidence in the record establishes that Mr. Ford did not voluntarily quit his employment. The claimant expressed no desire to leave work with this employer and had reported for scheduled work shifts as required. The claimant's employment ended when the employer was no longer willing to allow the claimant to continue in employment. The administrative law judge thus concludes that the claimant was discharged by the employer and did not voluntarily leave employment. In discharge cases the employer has the burden of proof. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on

deliberate, intentional, culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegations, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes no disqualifying conduct on the part of Mr. Ford. The sworn testimony of Mr. Ford and his witnesses establish that the claimant did not quit employment voluntarily. There being no evidence to the contrary, the administrative law judge must conclude that Mr. Ford was discharged for no disqualifying reason. Benefits are allowed.

DECISION:

The representative's decision dated October 19, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs