

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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THE UNIVERSITY OF IOWA  
C/o DAVE BERGEON EMPLOYEE  
RELATIONS  
121 UNIVERSITY SERVICES BLDG  
IOWA CITY IA 52242

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Appeal Number: 05A-UI-03615-S2T  
OC: 03/06/05 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Eric Paul (claimant) appealed a representative's March 31, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with The University of Iowa (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 17, 2005. The claimant was represented by Brian Fagen, Attorney at Law, and participated personally. The employer participated by David Bergeon, Human Resources Specialist II; Phyllis Jacobsen, Program Associate; Kent Smith, Assistant Computer Operations Manager; Linda Bergquist, Assistant Director Hospital Human Resources; and Richard Wessels, Assistant Computer Operations Manager. The claimant offered one exhibit which was marked for identification as Exhibit A. Exhibit A was received into

evidence. The employer offered one exhibit which was marked for identification as Exhibit One. Exhibit One was received into evidence.

#### 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 January 2, 2001, as a full-time computing information systems technician I. The claimant viewed a copy of the employer's handbook on a website. He received no warnings prior to his termination. On or about November 2004, the employer understood the claimant was requesting Family Medical Leave. It was subsequently granted. The claimant suffers from general anxiety and bi-polar conditions.

On February 22, 2005, the claimant had requested a change in his working hours under the Family Medical Leave. On February 23, 2005, the employer told the claimant he would have to provide more information from his physician. The claimant was upset about this because he felt the employer had consistently failed to provide him with information he should have. He asked a program associate to provide him with the paperwork by 5:00 p.m. The program associate was unable to provide the paperwork by 5:00 p.m. The claimant became agitated and had trouble controlling his anxiety. He told the program associate he was going to talk to his lawyer and the union. The program associate remembers the claimant stating he was not going to take this anymore and he would come at her with both barrels blazing. The claimant does not remember saying those words.

The claimant became increasingly agitated, pacing the room, bumping into a trash barrel and talking to himself. One co-worker thought he was talking to him when the claimant said something like "turn around or I'll slap you." After opening a pallet of paper with his pocketknife, he closed the blade and continued to tap the knife against the table as he talked to himself and viewed his computer monitor. Just after 5:00 p.m. the claimant realized he needed professional help. He reported to the employer he was leaving to go to the emergency room. He was diagnosed as manic depressive and bi-polar. The physician increased his medication and released him.

The employer suspended the claimant after hearing the claimant had frightened his co-workers with his behavior. In their letter of February 24, 2005, the employer advised the claimant he would have an appointment for Behavior Risk Management. The claimant would be evaluated and treated. On March 7, 2005, the employer terminated the claimant for displaying a weapon in the workplace and threatening physical violence against two co-workers. The employer did not allow an appointment with Behavior Risk Management prior to the termination.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 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). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide sufficient evidence of volitional misconduct at the hearing. The claimant's behavior, while inappropriate, was a result of his physical and mental condition. The claimant became aware that he needed treatment, removed himself from the workplace and sought medical attention. His conduct was not volitional. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

#### DECISION:

The representative's March 31, 2005 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

bas/pjs