

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON M WESTENDORF
Claimant

APPEAL NO. 12A-UI-10978-S2

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREMER COUNTY AUDITOR
Employer

OC: 08/12/12
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Brandon Westendorf (claimant) appealed a representative's August 30, 2012 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Bremer County Auditor (employer) for dishonesty in connection with his work. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was scheduled for October 15, 2012, in Waterloo, Iowa. The claimant participated personally. The employer participated by Mariah Shandri, program director; Lindley Sharp, administrative assistant; and Rick Gloede, executive director of finance and human resources. The employer offered and Exhibits One, Two, and Three were received into evidence. Mavis Butler observed the hearing.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 2, 2012, as a part-time Residential Specialist 1. The claimant signed for receipt of the employer's handbook. The handbook lists a progressive disciplinary system that includes a coaching, a reminder one, a reminder two, and termination. The employer issued the claimant a reminder one in 2012, for being disrespectful to the program director. The employer notified the claimant that further infractions could result in termination from employment.

On August 6, 2012, the employer discovered that the claimant did not complete his weekly cleaning checklist. The employer learned that the claimant was using a company computer to watch or listen to television and/or movies during work time. The claimant admitted that it was wrong not to complete the weekly cleaning checklist, use the employer's equipment for personal use, and to listen or watch movies/television during work time.

On August 10, 2012, the employer learned that the claimant was using his coworker's notes to document his activities. The claimant thought this was acceptable because the two were doing

the same things. The employer terminated the claimant on August 10, 2012, for copying and pasting his co-worker's notes into his Daily Note Documentation, failure to complete his weekly cleaning checklist, using the employer's equipment for the claimant's personal use, and listening or watching movies/television during work time

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

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 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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions. The claimant's disregard of the employer's interests is misconduct. As such, the claimant is not eligible to receive unemployment insurance benefits.

DECISION:

The representative's August 30, 2012 decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits, because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw