

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY SHOVER
Claimant

APPEAL NO: 07A-UI-00983-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUR OAKS INC OF IOWA
Employer

OC: 12/24/06 R: 03
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Gary Shover (claimant) appealed an unemployment insurance decision dated January 17, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Four Oaks Incorporated of Iowa (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 15, 2007. The claimant participated in the hearing. The employer participated through Keith Gatrost, Vice-President of Residential Services; Michelle Allmandinger, Program Manager; Karen Bruess, Vice-President of Human Resources; and D.J. Ropa, Employment Specialist. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

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 employed as a full-time youth counselor from October 15, 2000 through December 27, 2006 when he was discharged. The employer is a non-profit human services organization who provides a continuum of services. The claimant worked in the Stop Program which is a residential treatment program for the care and rehabilitation of juvenile male sexual abuse offenders. The employer has an appropriate conduct policy which specifically requires employees to maintain a high degree of professionalism, whether on or off duty. The employer also has a personal appearance and dress code policy which provides the expectation that each employee's appearance should be in good taste and appropriate to the level of work the employee performs with the employer. This policy advises staff they should be mindful of their role in the agency as human service professionals, as well as role models to the clients and families that they serve. The claimant signed for receipt of the Agency Handbook on October 15, 2000.

The claimant was given a disciplinary lay off and placed on a final work action plan on June 15, 2006 for violating the employer's appropriate conduct policy. He had been previously counseled on two distinct issues but both areas continued to be problematic. Employees are not allowed to share inappropriate personal or professional information with the clients but the claimant had demonstrated a pattern of extending beyond professional boundaries by revealing personal information with the youth with whom he worked. The employer found that the claimant failed to exercise professional judgment to the extent that it was believed he misunderstood the basics of his job. He was directed not to share his personal life, his work challenges or the details of his employment status with program youth or youth for whom he provides foster care. The other problem that prompted the final warning was his failure to remain awake during his assigned shift work. The employer advised the claimant the expectation was that there would be no further instances of staff or youth reporting that he was found asleep.

The claimant was discharged on December 27, 2006 after the employer received additional facts evidencing the claimant's poor judgment. Information was reported to the employer on December 21, 2006 that the claimant had posted pictures of himself of a pornographic nature on the Internet. Co-employees became aware of the claimant's pictures and brought them to the attention of the employer. The employer questioned the claimant about the pictures and he admitted posting them on the Internet but stated they were only intended for personal use. The claimant's actions demonstrated a final example of poor boundaries and poor decision making. He was discharged for a repeated violation of the appropriate conduct policy and for violating the final work action plan.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for a repeated violation of the employer's appropriate conduct policy. He had been placed on a final warning on June 15, 2006 and subsequently posted pornographic pictures of himself on the Internet. While the claimant disputes the pictures are of a pornographic nature, he admitted they could be perceived as pornographic. His actions could call into question his professional status and his ability to work with male sexual offenders. The claimant's repeated violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 17, 2007, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs