

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENT T BLUME

Claimant

APPEAL NO. 313A-UI-03242-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC

Employer

OC: 02/03/12

Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Pilot Travel Centers LLC (Pilot), filed an appeal from a decision dated March 11, 2013, reference 01. The decision allowed benefits to the claimant, Brent Blume. After due notice was issued, a hearing was held by telephone conference call on April 16, 2013. The claimant participated on his own behalf. The employer participated by General Manager Sam Ray.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Brent Blume was employed by Pilot from September 9, 1997 until January 31, 2013 as a part-time cashier/maintenance person. He worked the overnight shift and would have to attend to customers as well as cleaning the showers and toilets and the grills and food preparation areas in the kitchen. The facility has 17 showers and the average overnight shift would have only about 11 drivers buying a shower.

General Manager Sam Ray took over the facility December 1, 2012, and immediately noted the claimant's poor work performance. Customers complained about him being slow and unfriendly, and the showers and toilets would still have urine, feces and soap on surfaces.

Mr. Ray gave Mr. Blume two written warnings about his poor performance in the month of December 2012. On December 30, 2012, the claimant was issued a review and a 30-day performance improvement plan. He was told exactly what was expected of him as far as improved performance and that if satisfactory improvement was not seen by January 31, 2013, he would be fired.

During January 2013 Mr. Ray received at least three more complaints about lack of cleanliness in the shower and these were discussed with the claimant. Each time he tried to excuse himself by saying work had been busy. The manager reminded him the facility has 17 showers and the

overnight shift seldom had that many drivers requesting showers and there was no reason why so many of them remained dirty.

As of January 31, 2013, the employer saw no improvement at all in Mr. Blume's work and he was discharged.

Brent Blume has received unemployment benefits since filing a claim with an effective date of February 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

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 claimant had been advised his job was in jeopardy as a result of his poor work performance. The claimant's job duties did not require a high level of skill or training. He only had to make sure the showers and toilets were clean and that he was courteous to customers and gave prompt service.

In spite of many warnings there was not even a brief period when his performance improved. Because of the nature of the job duties the administrative law judge can only conclude Mr. Blume was not making any attempt whatsoever to meet the standard set forth by the general manager. It is possible he had been allowed to continue in this sub-standard manner for so long he simply did not feel any need to change. But the employer had made it clear a

good faith effort was required and this the claimant would not do. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of March 11, 2013, reference 01, is reversed. Brent Blume is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/tll