

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALVIN D JOHNSON
Claimant

APPEAL NO. 12A-UI-08577-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE BRANDS LLC
Employer

OC: 06/03/12
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Advance Brands, filed an appeal from a decision dated July 6, 2012, reference 02. The decision allowed benefits to the claimant, Alvin Johnson. After due notice was issued a hearing was held by telephone conference call on August 8, 2012. The claimant participated on his own behalf. The employer participated by Human Resources Manager Jan Feldotto and Maintenance Supervisor Aaron Rolfes.

ISSUE:

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

FINDINGS OF FACT:

Alvin Johnson was employed by Advance Brands from March 9, 2005 until June 6, 2012 as a full-time maintenance technician. On January 24, 2012, he was placed on a 90-day probationary period. The employer was very concerned he had received many warnings for failing to do many of his tasks accurately and safely. During the probation he was ordered to take, and pass, a number of skills tests. These were written, verbal and hands-on, and covered all the basic skills for his position.

By April 29, 2012, he had not completed all of the required tests and he was given a 30-day extension. By the end of that time he had failed the majority of the tests and could not evidence he had the necessary basic skills to do the maintenance correctly or safety. He was discharged on June 6, 2012.

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 does not dispute he was unable to do the job as required and failed the majority of the tests regarding the basic skills needed for the position. The employer's evaluation was that he was trying his best but simply did not have the ability to do the tasks as required.

A failure to successfully complete required course work is not evidence of misconduct where there is an attempt in good faith to satisfy the requirements. *Holt v. IDJS*, 318 N.W.2d 28 (Iowa App. 1982). 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

DECISION:

The representative's decision of July 6, 2012, reference 02, is affirmed. Alvin Johnson is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs