

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BECKERT
Claimant

APPEAL NO. 10A-UI-08107-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACE AMERICAN INSURANCE COMPANY
Employer

OC: 05/02/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ace American Insurance Company filed a timely appeal from an unemployment insurance decision dated May 25, 2010, reference 01, that allowed benefits to Michael J. Beckert. After due notice was issued, a telephone hearing was held July 22, 2010 with Mr. Beckert participating. Craig Cree of ADP UC eXpress appeared on behalf of the employer. The scheduled witness Dylan Moore, however, did not participate. The number provided for him was answered by a recording.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Michael J. Beckert was employed by Ace American Insurance Company from November 4, 2009 until he was discharged December 31, 2009. He worked as an insurance agent. Finding that he was not making enough money in his present position, Mr. Beckert had applied for and was in training for another job. When his supervisor, Dylan Moore, learned of this, he fired Mr. Beckert.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with his employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer offered no evidence in this hearing. The claimant's testimony is uncontradicted. There is no evidence to establish that Mr. Becker had made an agreement not to work for anyone else while working for this employer. There is no evidence that his other employment was prohibiting him from reporting for his regular work shifts. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated May 25, 2010, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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