

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDAL J MOFFITT
Claimant

APPEAL NO. 12A-UI-03183-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLL DISTRIBUTING LC
Employer

OC: 02/05/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Randal Moffitt, filed an appeal from a decision dated March 21, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 12, 2012. The claimant participated on his own behalf. The employer, Doll Distributing LLC (Doll), participated by Human Resources Director Deb Marchesano.

ISSUE:

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

FINDINGS OF FACT:

Randal Moffitt was employed by Doll Distributing from December 13, 2010 until February 3, 2012 as a full-time account manager. He had been talked to once by General Manager Darrin Fidler about having out of date product in some stores and others which had no products at all and other performance issues. His job was essentially to oversee the delivery drivers to make sure all procedures were being followed.

On January 27, 2012, Mr. Fidler and a team leader found out of stock or out of date product in four stores. The managers reviewed the claimant's employment history and discharged him on February 3, 2012.

Mr. Moffitt asserted he had left written communications to the drivers to rotate stock but it was not done. The out of stock situation was due to the unavailability of the product from the warehouse. Other matters he had brought to the attention of the general manager and the team lead but did not get any help. These men were to have driven with Mr. Moffitt in December 2011 and January 2012 to help him with the problems but the trips were cancelled and nothing further was done to provide the assistance the claimant had requested.

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 employer has the burden of proof to establish the claimant was discharged for substantial, job-related misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). In this case the employer's witness had no firsthand knowledge of the events and circumstances, she had only been consulted by the team lead and the general manager. She had not discussed this with Mr. Moffitt to obtain information about the failure of the drivers to remove outdated product or the failure of the team lead and general manager to provide the requested help.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of March 21, 2012, reference 01, is reversed. Randal Moffitt is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css