

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN G ISBELL
Claimant

APPEAL NO. 100-UI-02109-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACT INC
Employer

OC: 09/20/09
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, ACT, filed an appeal from a decision dated October 7, 2009, reference 01. The decision allowed benefits to the claimant, Brian Isbell. After due notice was issued, a hearing was held by telephone conference call on March 22, 2010. The claimant participated on his own behalf and was represented by Iowa Legal Aid in the person of Elizabeth Norris. The employer participated by Manager of Employee Relations Deb Schriver and was represented by TALX in the person of Jacqueline Jones. Exhibits One and Two were admitted into the record.

ISSUE:

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

FINDINGS OF FACT:

A hearing was previously held in this matter in Appeal 09A-UI-15880-VST and a decision entered November 25, 2009. The administrative law judge adopts the findings of fact from that decision as though set out here in full.

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 administrative law judge adopts the reasoning and conclusions of law from Appeal 09A-UI-15880-VST as though set out here in full.

DECISION:

The representative's decision of October 7, 2009, reference 01, is reversed. Brian Isbell is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, 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/css