

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORY L HOLLOWAY
Claimant

APPEAL NO. 12A-UI-08037-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHOTTENKIRK WEST BURLINGTON INC
Employer

OC: 06/03/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Cory Holloway, filed an appeal from a decision dated June 26, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 30, 2012. The claimant participated on his own behalf. The employer, Shottenkirk, participated by General Manager Troy Patterson.

ISSUE:

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

FINDINGS OF FACT:

Cory Holloway was employed by Shottenkirk from August 14, 2008 until May 31, 2012. He was hired as a full-time sales associate but voluntarily went part time in January 2010, to go to school.

General Manager Troy Patterson did not feel Mr. Holloway was selling enough cars as a part-time employee. Full-time sales people do not have any quotas and none was established for the claimant when he became part time. Mr. Patterson arbitrarily set a quota of five cars per month to be sold by the claimant around the time the decision was made to discharge him. Mr. Holloway was never informed he was expected to sell a certain number of cars per month at any time.

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). There is no evidence of willful and deliberate misconduct on the part of the claimant. Only one warning appears to have been given nearly two years after he went part-time, and the number of five cars per month was only established immediately prior to the discharge.

There is nothing in the record to establish the claimant was willfully and deliberately refusing to work to the best of his ability to sell cars as a part-time employee. The employer has failed to meet its burden of proof and disqualification may not be imposed.

DECISION:

The representative's decision of June 26, 2012, reference 02, is reversed. Cory Holloway is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css