

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**SHELDON E SNELSON JR  
1338 – 3<sup>RD</sup> AVE NW #82  
FORT DODGE IA 50501**

**FERGUSON ENTERPRISES INC  
C/O TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-03454-RT  
OC: 01-30-05 R: 01  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer, Ferguson Enterprises, Inc., filed a timely appeal from an unemployment insurance decision dated March 17, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Sheldon E. Snelson, Jr. After due notice was issued, a telephone hearing was held on April 20, 2005, with the claimant participating. Eric Meyer, Branch Manager for the employer's branch in Fort Dodge, Iowa, participated in the hearing for the employer. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Employer's Exhibit One and Claimant's Exhibit A, the administrative law judge finds: The claimant was employed by the employer as a full time outside sales person from April 20, 2003 until he was discharged on February 2, 2005. The claimant was discharged for two reasons: job performance and in particular failing to meet his sales goals or quotas and lack of customer service. Concerning the claimant's sales goals, the employer expected the claimant to make sales of \$100,000.00 for each month. The claimant's sales in November and December of 2004 were between \$30,000.00 and \$40,000.00 per month. The claimant worked in the water works section. It is customary, because of the severe winters in Iowa, that the sales for water works matters drop from November through March of each year. The claimant was making his sales calls as shown at Claimant's Exhibit A. The claimant also faced some competition from the plumbing sales person. The claimant was doing the best he could to reach the employer's sales goals.

In regards to the second reason for the claimant's discharge, lack of customer service, the claimant attempted to be prompt in his customer service. The claimant did occasionally misquote prices because he was a one-man operation and did make mistakes but the claimant did the best he could. The claimant was not aware of any situations or occasions when he had ordered materials incorrectly. The claimant did get a number of warnings as shown at Employer's Exhibit One. Four of the warnings occurred on the same day, November 5, 2004, one of which the claimant did not see which is the one that the claimant did not sign. The other three the claimant signed. The warnings deal with failure to meet sales goals and customer service. The claimant then received another warning on December 8, 2004 again for failing to meet his sales goal. Finally, the claimant received another warning on January 11, 2005 for again failing to meet his sales goals. The employer had no evidence that the claimant's failures to meet his sales goals or his customer service failures were willful or deliberate. Pursuant to his claim for unemployment insurance benefits filed effective January 30, 2005, the claimant has received unemployment insurance benefits in the amount of \$3,542.00 as follows: \$322.00 per week for eleven weeks from benefit week ending February 5, 2005 to benefit week ending April 16, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant's separation from employment was a disqualifying event. It was not.
2. Whether the claimant is overpaid unemployment insurance benefits. He is 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The parties agree, and the administrative law judge concludes that the claimant was discharged on February 2, 2005. In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. It is well established that the employer has the burden to prove disqualifying misconduct. See Iowa Code section 96.6(2) and Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (Iowa 1982) and its progeny. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. Both witnesses testified credibly. The employer's witness, Eric Meyer, Branch Manager of the employer's location in Fort Dodge, Iowa, testified that the claimant was discharged for two reasons, job performance in failing to meet his sales goals or quotas and lack of customer service. Concerning the claimant's sales goals, even Mr. Meyer conceded that from November through March the sales are down customarily in the industry and in particular when the claimant is dealing in water works. The claimant credibly testified that he was trying the best he could to meet his sales goal but was unable to do so. Claimant's Exhibit A documents the claimant's sales calls in an effort to make sales. The claimant also testified that he had some competition from the plumbing sales person. Mr. Meyer could demonstrate no evidence of any willful or deliberate conduct on the part of the claimant causing a failure to reach his sales quotas. The administrative law judge concludes that the claimant's failure to make his sales quotas was not a deliberate act or omission constituting a material breach of his duties and obligations arising out of his worker's contract of employment nor does it evince a willful or wanton disregard of the employer's interests nor was it carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. It is true that the claimant got a series of written warnings for not meeting his sales quotas, but the claimant was doing the best he could. At most, the claimant's behavior here was mere inefficiency, unsatisfactory conduct, failure in good performance as a result of inability or incapacity and is not disqualifying misconduct.

Concerning the claimant's lack of customer service, the claimant denied that he delayed in providing customer service. The claimant candidly conceded that he did occasionally misquote prices but these were mistakes because he was a one-man operation. The claimant was not aware of any occasions when he ordered materials incorrectly. Again, the employer provided no evidence that these alleged failures were willful or deliberate. The claimant did get some warnings for these, but the administrative law judge notes that the claimant's warnings for customer service all occurred on November 5, 2004. Thereafter, the written warnings were just for failing to meet his sales quotas. It does not appear that the claimant received any written warnings after November 5, 2004 for his alleged customer service failures. Accordingly, the administrative law judge concludes that the claimant's alleged customer service failures were not deliberate acts or omissions constituting a material breach of his duties and obligations arising out of his worker's contract of employment nor do they evince willful or wanton disregard of the employer's interests nor are they carelessness or negligence in such a degree of recurrence as to establish disqualifying misconduct. The claimant's behaviors here were again inefficiency, unsatisfactory conduct, failure in good performance as a result of an inability or incapacity and further ordinary negligence in isolated instances but none of these are disqualifying misconduct.

In summary, and for all of the reasons set out above, the administrative law judge concludes that the reasons for the claimant's discharge do not rise to a level of disqualifying misconduct and, as a consequence, he is not disqualified to receive unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits, and misconduct to support a disqualification from unemployment insurance benefits, must be substantial in nature. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395, 398 (Iowa App. 1989). The administrative law judge concludes that there is insufficient evidence here of substantial misconduct on the part of the claimant to warrant his disqualification to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided he is otherwise eligible.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The administrative law judge concludes that the claimant has received unemployment insurance benefits in the amount of \$3,542.00 since separating from the employer herein on or about February 2, 2005 and filing for such benefits effective January 30, 2005. The administrative law judge concludes that the claimant is entitled to these benefits and is not overpaid such benefits.

DECISION:

The representative's decision dated March 17, 2005, reference 02, is affirmed. The claimant, Sheldon E. Snelson, Jr., is entitled to receive unemployment insurance benefits, provided he is otherwise eligible, because he was discharged but not for disqualifying misconduct. As a result of this decision, the claimant is not overpaid any unemployment insurance benefits arising out of his separation from the employer herein.

sc/pjs