

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL D STEFFENS
Claimant

APPEAL NO. 12A-UI-09555-VST

REIF OIL CO
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/01/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 1, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 30, 2012. The claimant participated personally. The employer responded to the hearing notice but when the number was dialed by the administrative law judge, a voice message said that the individual was not available and to call back later. There was no way to leave a message. The record consists of the testimony of Russell Steffens.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer owns and operates several convenience stores. The claimant worked for approximately five years at the store located in Muscatine, Iowa. The claimant was a full-time employee. His last day of work was July 2, 2012. He was terminated on July 2, 2012. He was told that he was being terminated for poor customer service skills. The claimant had no knowledge of any customer complaints about his work.

The employer did not participate in the hearing.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory job performance. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this record. The employer did not participate in the hearing. The claimant said he was terminated for his poor customer service skills. At best this could be construed as unsatisfactory job performance, which is not misconduct. Since the employer failed to produce any evidence of disqualifying misconduct, benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 1, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs