

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARTIN L HUMPHREY**  
Claimant

**ACH FOOD CO INC**  
Employer

**APPEAL NO: 10A-UI-15376-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(5) – Trial Employment Period

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated October 29, 2010, reference 01, that held the claimant was discharged while on a trial period of employment on September 19, 2010, and benefits are allowed. A telephone hearing was held on December 20, 2010. The claimant and the employer did not participate in the hearing.

**ISSUE:**

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds: The claimant worked for the employer as a full-time production employee from June 14, 2010 to September 13. The employer discharged the claimant on September 19 and it protested the claimant's claim stating he failed his probationary employment period.

The claimant and employer failed to respond to the hearing notice.

**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(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The administrative law judge concludes that the claimant was discharged from employment for no act of misconduct on September 19, 2010. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

A discharge due to a failure to satisfy a probationary period of employment is not misconduct.

**DECISION:**

The department decision dated October 29, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on September 19, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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