

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BROOK F WENNERSTRUM
Claimant

APPEAL NO. 09A-UI-19249-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND PAYMENT SYSTEMS INC
Employer

OC: 11/29/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brook F. Wennerstrum filed a timely appeal from an unemployment insurance decision dated December 21, 2009, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held January 28, 2010 with Mr. Wennerstrum participating. The employer, Heartland Payment Systems, Inc., did not provide the name and telephone number of any witnesses.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Brook F. Wennerstrum was employed as a relationship manager, a commission sales position, by Heartland Payment Systems, Inc. from January 2009 until November 25, 2009. At a regular weekly meeting with his supervisor, Ron Bouton, Mr. Bouton asked Mr. Wennerstrum if he intended to resign. Mr. Wennerstrum had made no sales for approximately two months. Mr. Wennerstrum declined to resign. He wished to stay with the company. Mr. Bouton ended the employment relationship. Mr. Wennerstrum had received no warnings during his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does 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.

The employer has the burden of proof. See Iowa Code section 96.6-2. As noted above, the employer did not participate. The claimant's testimony is the only evidence in this record.

The evidence establishes that Mr. Wennerstrum did not intend to sever the employment relationship. Thus, the separation cannot be viewed as a voluntary quit. There is no evidence to establish that the employer ended the employment relationship because of misconduct. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 21, 2009, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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