

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON ORTH
Claimant

APPEAL NO. 09A-UI-18866-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLOCKBUSTER INC
Employer

OC: 11/08/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Blockbuster, Inc. filed a timely appeal from an unemployment insurance decision dated December 7, 2009, reference 01, that allowed benefits to Brandon Orth. After due notice was issued, a telephone hearing was held January 7, 2010 with Mr. Orth participating. The employer did not provide the name and telephone number of any witnesses.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

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: Brandon Orth was employed by Blockbuster, Inc. from October 1, 2004 until he was discharged November 6, 2009. He last worked as a store manager. Approximately five days before the date of discharge Mr. Orth was working on a Saturday night with one other employee. A few days before the date of discharge, another manager planned to have one of his employees pose as an angry customer and place a prank call to Mr. Orth's employee. Mr. Orth was generally aware of the prank but did not know the details of what would be said. Mr. Orth's employee was so upset with the prank call that she resigned. Mr. Orth was discharged for the prank call but neither the other manager nor employee has been discharged.

Mr. Orth had received prior warnings on inventory control matters, but the sole reason stated for the discharge was the prank call.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with his employment. For the reasons which follow, the administrative law judge concludes that 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 before the administrative law judge. This testimony establishes a single instance of poor judgment. Absent evidence indicating that Mr. Orth was the originator of the prank or that he knew in advance of the content of the call, the administrative law judge concludes that the evidence is insufficient to establish disqualifying misconduct.

DECISION:

The unemployment insurance decision dated December 7, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs