

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM CLYMER
Claimant

APPEAL NO. 11A-UI-11674-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXECUTIVE TECHNOLOGIES INC
Employer

OC: 07/31/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Executive Technologies (employer) appealed a representative's August 31, 2011 decision (reference 01) that concluded William Clymer (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 28, 2011. The claimant participated personally. The employer participated by Dave Strohman, vice president. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on May 24, 2011, as a full-time sales representative. The claimant signed for receipt of the employer's handbook on May 24, 2011. On July 6, 2011, the employer issued the claimant a verbal warning for misrepresenting his status and not appearing for work on time. The employer notified the claimant that further infractions could result in termination from employment. The claimant did not remember the employer telling him that he would be terminated for a further infraction.

On July 29, 2011, the claimant was proceeding to Dubuque, Iowa, from Cedar Rapids, Iowa. In route, the claimant's road was closed due to 12 inches of rain and the claimant was late arriving at work. He immediately notified the employer and the employer told the claimant that it was not a problem. The employer confirmed with the Department of Transportation that the road was closed. The employer told the claimant that he was being terminated because of things going on at the company, the claimant was not profitable to the company, and the employer would consider the claimant for future employment. The employer testified at the hearing that it terminated the claimant for tardiness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The grounds for discharge listed under a contract of hire are irrelevant to determination of eligibility for Job Service benefits in a misconduct situation. Hurtado v. Iowa Department of Job Service, 393 N.W.2d 309 (Iowa 1986). The final event, the tardiness, was due to an unforeseen road condition. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eyewitness to the events for which he was terminated.

DECISION:

The representative's August 31, 2011 decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw