

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH C KEANE
Claimant

APPEAL NO. 10A-UI-02768-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARAMARK UNIFORM & CAREER APPAREL
Employer

**OC: 01/24/10
Claimant: Appellant (1)**

Section 96.5-2-a – Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 15, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 16, 2010. Claimant participated. The claimant was represented by Jay Smith, attorney at law. Employer participated by David Gibson, general manager, and Rob Jenson, district manager. The employer was represented by Tom Kuiper. The record consists of the testimony of David Gibson; the testimony of Rob Jenson; the testimony of Kenneth Keane, Claimant's Exhibits A-G; and Employer's Exhibits 1-5.

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 provides uniforms and linens on rental and on direct sales. The claimant was hired on June 5, 2006, as a full times route sales representative. He was terminated on January 19, 2010, for falsifying his company sales call sheet.

As a route salesman, the claimant was required to service existing customers and makes sales calls on potential customers. The employer has a collective bargaining agreement with the Teamsters union. One of the provisions of the collective bargaining agreement is that route sales people were to average ten sales calls per week, averaged over a month. The sales contact were to be in person and all calls were recorded on a sales call sheet. These call sheets were turned in to the employer. The district manager, Rob Jenson, would then review them. He conducted what he called "audits" a few times each week.

Mr. Jenson was concerned that the claimant's sales were not tracking with the claimant's sales calls. In order to help the claimant close more sales, he took the claimant's call sheets for

January 11, 2010; January 12, 2010; and January 13, 2010. He made calls to several of the businesses and contact persons listed on the sheet. He discovered some of the individuals listed as contact person for a business did not even work for that business. Other businesses told Mr. Jenson that no one had made a sales call.

On January 14, 2010, Mr. Jenson and David Gibson met with the claimant to discuss the findings that had been made concerning his sales call sheets. A union steward was also present. Mr. Jenson asked the claimant to verify his sales calls sheets and in particular if the contact listed was the actual person that he had spoken with at the business. The claimant replied yes. Mr. Jenson then explained that he had made calls to these businesses and had discovered that the listed individuals were not employed by the businesses. The claimant was then asked by the union steward to describe one of the individuals that he had talked to and the claimant replied that he was tall and had black hair. The claimant was then asked about a sales call at Rubida Insurance. Rubida Insurance was a one person agency and Mr. Jenson was told that no one from Aramark had called on him.

At this juncture in the meeting, Mr. Gibson and Mr. Jenson were asked to leave. The union steward and the claimant were left alone to discuss the matter. When Mr. Gibson and Mr. Jenson returned, the claimant admitted that he had not actually stopped at these businesses, but rather called from a Chamber of Commerce telephone sheet. He was asked how he could physically describe a contact as being tall and having black hair. The claimant did not reply. The claimant was also asked about the Rubida Insurance sales call and the claimant admitted that he did not stop at that business and did not talk to anybody from that business.

A second meeting was held on January 19, 2010. At that meeting, the claimant admitted that he had written down sales calls and had initially told the employer that all of these calls were legitimate and not listed for purposes of making the quota. The claimant also agreed that he had not made some of these sales calls and that this practice of his had been going on for a couple of months. The employer then informed the claimant that he was being terminated immediately for falsifying company documents and dishonesty.

One of the provisions of the collective bargaining agreement between the employer and the union states that no warning notice need be given to an employee before he is discharged if the cause of discharge is for a reason such as theft and dishonesty. (Exhibit 2)

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. One of the most fundamental duties owed to an employer is honesty. An employer can reasonably expect that an employee will be truthful when preparing documents and records and when answering questions pertaining to those documents. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant falsified his sales call sheets on January 11, 2010; January 12, 2010; and January 13, 2010. He listed businesses where sales calls were not made and contacts who did not even work at those businesses. He told the employer that he had been doing this for a couple of months. The claimant compounded this dishonesty by at first telling the employer that he had made those calls and going so far as to describe an individual he never saw. It was only after a meeting with the union steward that the claimant finally admitted that he had not made those calls. He tried to justify his sales calls by saying he got a sheet from the Chamber of Commerce and had made some telephone calls. Even if those calls were made, the employer could find no evidence that the claimant had even talked to some of these businesses by phone.

The greater weight of the evidence is that the claimant was untruthful when filling out his sales contact sheets and when first questioned about the accuracy of those sheets. The claimant deliberately falsified these reports in order to meet his quota. Falsification of company reports and a subsequent affirmation of the veracity of those reports is a material breach of the duties owed to the employer by the claimant. Misconduct has been established. Benefits are denied.

DECISION:

The decision of the representative dated February 15, 2010, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs