

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABIGAIL F FELDERMAN
Claimant

APPEAL NO: 06A-UI-09091-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TABOR HOME VINEYARDS & WINERY
Employer

**OC: 08/13/06 R: 04
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Tabor Home Vineyards & Winery (Tabor) filed an appeal from a representative's decision dated September 1, 2006, reference 01, which held that no disqualification would be imposed regarding Abigail Felderman's separation from employment. After due notice was issued, a hearing was held by telephone on September 26, 2006. Ms. Felderman participated personally. The employer participated by Martha Tabor and Paul Tabor, Owners. Exhibits One through Five were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Ms. Felderman was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Felderman was employed by Tabor from March 1 until August 9, 2006 as a full-time sales representative. Her primary job was to make wholesale wine sales. She was to call on existing accounts and develop new accounts. She was also responsible for making deliveries, stocking shelves in retail outlets and receiving payments. Ms. Felderman was also expected to schedule wine tasting events at retail outlets. She had monthly goals as to how much wine the employer expected her to sell.

Ms. Felderman met her sales goal for the month of May. She was 46 cases short of her goal of 247 cases for June and 126.6 cases short of her goal of 275.8 cases for July. The employer made suggestions of ways in which she could increase sales and Ms. Felderman implemented them as she was able. She was told that sales of at least 100 cases per month were necessary in order to cover her salary and benefits. She sold in excess of 100 cases each month.

Ms. Felderman did develop new accounts during her employment and scheduled wine tastings when she could. She was at all times working to the best of her abilities. Because the winery's sales did not increase to the extent expected by the employer, Ms. Felderman was notified on August 9 that she was being discharged.

REASONING AND CONCLUSIONS OF LAW:

Ms. Felderman was discharged by Tabor. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Ms. Felderman was discharged because she failed to meet her sales goals. The administrative law judge is satisfied that she was putting forth her best efforts and otherwise working to the best of her abilities to meet the employer's goals. The employer failed to establish that Ms. Felderman deliberately and intentionally acted in a manner that she knew or should have known would adversely effect sales. For example, there was no evidence that she failed to call on established accounts where the sales volumes had historically been high. There was no evidence that her lack of sales was the product of poor customer relations with the accounts she called on.

After considering all of the evidence, the administrative law judge concludes that the employer has failed to satisfy its burden of proving that Ms. Felderman was discharged for misconduct as that term is defined by law. The evidence failed to establish that the low sales were due to Ms. Felderman rather than other factors. While the employer may have had good cause to discharge, conduct that might warrant a discharge from employment will not necessarily support a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa 1983). For the reasons stated herein, benefits are allowed.

DECISION:

The representative's decision dated September 1, 2006, reference 01, is hereby affirmed. Ms. Felderman was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/cs