

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J SIRIANNI
Claimant

APPEAL NO. 09A-UI-19054-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OZARK AUTOMOTIVE DISTRIBUTORS INC
Employer

OC: 05/24/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Ozark Automotive Distributors, Inc. filed a timely appeal from an unemployment insurance decision dated December 11, 2009, reference 02, that allowed benefits to Timothy J. Sirianni. After due notice was issued, a telephone hearing was held January 25, 2010 with Human Resources Supervisor Whitney Smith participating for the employer. The claimant did not provide a telephone number at which he could be contacted. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for disqualifying misconduct?

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: Timothy J. Sirianni was employed by Ozark Automotive Distributors, Inc. as a part picker from August 18, 2009 until he was discharged November 19, 2009. The claimant could not perform the work to the satisfaction of the employer because he could not do the work as fast as needed by the employer. The employer even extended the claimant's training period in the hopes that he would develop sufficient speed to perform the job in an acceptable manner. The claimant was unable to do so.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes 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. From the testimony of the employer's witness and a careful review of Exhibit One, the administrative law judge is unable to find any time at which the claimant was able to perform the job as well as needed by the employer. On the other hand, there is no evidence that the claimant was not providing his best effort. While lack of effort may constitute misconduct, lack of skill does not. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated December 11, 2009, reference 02, 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

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