

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON K SCHWENKE

Claimant

APPEAL NO. 09A-UI-02680-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOEHRINGER INGELHEIM LTD

Employer

Original Claim: 01/04/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Aaron Schwenke filed an appeal from a representative's decision dated February 10, 2009, reference 01, which denied unemployment insurance benefits based upon his separation from Boehringer Ingelheim, Ltd. After due notice was issued, a telephone conference hearing was scheduled for and held on March 16, 2009. The claimant participated personally. Although duly noticed, the employer did not respond to the hearing notice and did not participate.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was employed as a pharmaceutical sales representative for Boehringer Ingelheim, Ltd., from February 1999 until December 19, 2008, when he was discharged from employment. The claimant was employed on a full-time basis. His immediate supervisor was James Roth-Roffy.

The claimant was discharged for failing to promptly notify his immediate supervisor of an OWI offense that had occurred on or about October 12, 2008. The claimant delayed notifying the company, as he hoped the charges would be dropped, and because he was unaware that there was a 24-hour time limit on notification. In an effort to determine whether there was a time limit for reporting, Mr. Schwenke searched the company's website but was unable to locate any information regarding reporting or time limitations. Mr. Schwenke realized, however, that he had an obligation to report the matter to company management and did so voluntarily on December 5, 2008. At that time, he was made aware of the time limitation, and a decision was made to discharge Mr. Schwenke from his employment. The reporting and/or time limitation requirements had been implemented in 2005 or 2006 and information on the requirements was available to employees under a "fleet" heading on the web site, a portion of the website that Mr. Schwenke had not searched.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct sufficient to warrant a denial of unemployment insurance benefits. It does not.

The evidence in the record establishes that Mr. Schwenke was discharged for failing to report a driving offense to his employer within a 24-hour time period. The evidence establishes that Mr. Schwenke did voluntarily report the matter but was unaware that he was required to do so within a 24-hour period. The evidence in the record establishes that although the claimant self-reported the matter, he did not do so within the time frame allowed by company policy. Mr. Schwenke was not aware of the policy and had made reasonable attempts to determine whether there was a time limit required for self-reporting. The reporting requirement had been implemented by the company; however, the claimant was not aware of it, as it was located on a portion of the company's website where the claimant did not reasonably anticipate it would be located.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not be necessarily serious enough to warrant a denial unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.

For the reasons stated herein, the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional misconduct sufficient to warrant a denial of unemployment insurance benefits. Benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated February 10, 2009, reference 01, is reversed. The claimant was dismissed under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw