

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J BRUMMER
Claimant

APPEAL NO: 12A-UI-00135-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARONA CORPORATION
Employer

OC: 12/04/11

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Arona Corporation (employer) appealed a representative's December 28, 2011 decision (reference 01) that concluded Michael J. Brummer (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last known addresses of record, a telephone hearing was held on February 1, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Lisa Eastman of Merit Resources appeared on the employer's behalf and presented testimony from one other witness, Theresa Peterson. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits denied.

FINDINGS OF FACT:

The claimant started working for the employer on February 1, 2008. He worked full time as a customer accounts manager at the employer's Dubuque, Iowa furniture and appliance rent-to-own store. His last day of work was December 5, 2011. The employer discharged him on that date. The stated reason for the discharge was insubordination and refusal to follow instructions.

The claimant had previously been given a written warning for similar issues on November 15, 2011. He had been told on several times that certain decisions, such as whether or not to extend service into a new area, could only be made by the general manager. On December 2 the employer learned that between October and December 2 the claimant had told an existing

customer who was moving from closer to Dubuque to Sabula, 30 to 40 minutes south of Dubuque, that the employer did not service Sabula. First, the employer does in fact service Sabula, and second, this is the type of decision the claimant had been told belonged strictly to the general manager. The employer learned of what the claimant had done on December 2 when the customer contacted the employer to cancel his contract; because of the claimant's handling of the matter, the employer was unable to salvage the customer when it became aware of the situation on December 2. As a result of the claimant's actions contrary to his instructions, the employer discharged the claimant.

The claimant established a claim for unemployment insurance benefits effective December 4, 2011. The claimant has received unemployment insurance benefits after the separation.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a.

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's acting contrary to his instructions and handling of the customer's situation shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the

claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative's December 28, 2011 decision (reference 01) is reversed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of December 5, 2011. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs