

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY D FEDLER**  
Claimant

**APPEAL NO. 14A-UI-01946-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEERY BROTHERS INC**  
Employer

**OC: 05/05/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Deery Brothers (employer) appealed a representative's February 10, 2014, decision (reference 03) that concluded Ashley Fedler (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 12, 2014. The claimant participated personally. The employer was represented by Diana Perry-Lehr, Hearings Representative, and participated by Terry Mertens, General Manager.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 22, 2013, as a full-time internet business development center associate. On August 22, 2013, the claimant became an internet sales manager. The claimant signed for receipt of the employer's handbook on July 16, 2013, and January 6, 2014.

The claimant had purchased a truck from the employer. All employees are instructed to go to the employer first to sell their vehicles. On January 14, 2014, the claimant asked the manager and a sales associate about selling her truck. The two said they could not help her and she should go elsewhere. The claimant went to another place, sold her truck, and purchased another vehicle. On January 18, 2013, the owner called the claimant into his office and told her she committed career suicide for purchasing a car elsewhere. The owner called her stupid three times. The claimant was upset, crying, and tried to explain what happened. She asked the owner if she could go home. The owner told her she could go home. On January 20, 2014, the general manager told her she was terminated for leaving work early without permission.

The claimant filed for unemployment insurance benefits with an effective date of May 5, 2014. The employer did not participate at the fact-finding interview on February 7, 2014.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose not to do so. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

**DECISION:**

The representative's February 10, 2014, decision (reference 03) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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