

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PRINCE J MARTIN
1127 IOWA ST FL 1
DUBUQUE IA 52001-4819**

**SALVATION ARMY
1099 IOWA ST
DUBUQUE IA 52001**

**Appeal Number: 06A-UI-02955-CT
OC: 02/05/06 R: 04
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Salvation Army filed an appeal from a representative's decision dated March 6, 2006, reference 01, which held that no disqualification would be imposed regarding Prince Martin's separation from employment. After due notice was issued, a hearing was held by telephone on April 3, 2006. Mr. Martin participated personally. The employer participated by Tom Mason, Captain, and Marlene Smothers, Office Manager.

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: Mr. Martin was employed by Salvation Army

beginning November 19, 2005 as a bell-ringer soliciting charitable contributions from the public. He was hired to work from 20 to 40 hours each week until December 24, 2005. On November 21, the employer received a complaint that Mr. Martin was asking people for money and gifts for himself personally.

As a result of the complaint, Captain Mason went to Mr. Martin's location with the intent of removing him from duty while the complaint was being investigated. Captain Mason offered him a ride back to the office but Mr. Martin declined and threw his badge on the ground. Because he threw the badge on the ground, the decision was made to discharge him.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Martin was separated from employment for any disqualifying reason. 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). Mr. Martin was not discharged as a result of the complaint that he was soliciting for himself personally. The employer was just starting the process of investigating the allegation when the discharge occurred. Mr. Martin was discharged because he threw his badge on the ground.

Mr. Martin's conduct did not evince a willful or wanton disregard of the standards the employer had the right to expect. His conduct was an apparent response to having been accused of wrong-doing. This single "hot-headed" incident is not sufficient to establish substantial misconduct as required for a disqualification from job insurance benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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.

The employer's appeal indicates that it is not liable for job insurance benefits because it is a religious organization. If that is the case, they do not have an employer account that is subject to charges for benefits paid to Mr. Martin.

DECISION:

The representative's decision dated March 6, 2006, reference 01, is hereby affirmed. Mr. Martin was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc