

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT D HOLDER
Claimant

APPEAL NO. 11A-UI-00938-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCKEE AUTO CENTER INC
Employer

OC: 12/12/10
Claimant: Appellant (1)

Section 96.5-2-a - Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated January 13, 2011, reference 01, that held he was discharged for misconduct on November 30, 2010, and that denied benefits. A telephone hearing was held on February 23, 2011. The claimant and his witnesses, Ivan Olson and Phil Johnson, participated. John Haakma, sales manager, and Anthony McKee, owner, participated for the employer. Claimant Exhibits 1, 2, 3, and 4 were received as evidence.

Prior to the hearing, the claimant waived his right to an in-person hearing and waived his request to subpoena employer documents.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment as a full-time finance manager on April 1, 2008, and last worked for the employer on November 30, 2010. The employer discharged the claimant for failing to perform his job duties as instructed in light of prior warnings.

The employer issued several verbal warnings to claimant in May 2010 for failing to complete and include the paperwork necessary to finance and complete transactions for car deals. The employer issued the claimant a formal written warning on June 22, 2010 for tardiness and failing to have his paperwork in order to complete business/car deals. The claimant was placed on a 30-day probation. The employer perceived that the claimant was disorganized, and it provided him a checklist that he was to follow as to the documentation required for financing car loans. The claimant signed the warning without protest.

The sales manager continued to get after the claimant about having his paperwork in proper order. On November 17, the employer issued claimant a written warning about losing his

paperwork for a car deal. Later, the employer discovered claimant had failed to properly deal with a lien on a vehicle involved in the same matter. The employer discharged the claimant on November 30 for a repeated failure to follow instructions regarding the paperwork required to timely complete its business transactions.

The claimant alleges he was terminated because the employer owed him money for work he performed. The claimant denies he failed to protest employer warnings, and denies the employer found the lost paperwork for the car deal that he was warned about and discharged for in his desk after he was terminated.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has established that the claimant was discharged for misconduct in connection with employment on November 30, 2010, for repeated failure to follow employer instructions in the performance of his job.

The claimant waived his request for an in-person hearing and for the subpoena of employer documents. Prior to the hearing, claimant was afforded the opportunity to have this matter re-scheduled as an in-person hearing where the employer would be subpoenaed to produce the documents he had requested.

The employer offered credible testimony that claimant did not deny he was issued written warnings about his job performance. The employer repeatedly warned claimant he was not completing the necessary paperwork to finance car deals, so it provided him a checklist instruction to make sure all the documentation was present in the file to obtain financing. The employer offered credible testimony that the claimant failed in his job duties when he was warned on November 17 and thereafter regarding a further transaction, which is misconduct in light of the prior warnings.

Claimant contends he is more credible than the employer and alleges he was terminated because the employer owed him money. The employer read into the record the content of the written warnings, which included no claimant protest. The claimant contends there was no current act of misconduct, but the written warning of November 17 flowed into a continuing pattern of a failure to perform job duties when the employer discovered further deficiencies arising out of the same car deal.

DECISION:

The department decision dated January 13, 2011, reference 01, is affirmed. The claimant was discharged for misconduct on November 30, 2010. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw