

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

STEVEN J POTTER
1214 W STATE ST
MARSHALLTOWN IA 50158

CLEMONS INC
2909 S CENTER ST
PO BOX 1533
MARSHALLTOWN IA 50158-1533

Appeal Number: 05A-UI-02482-CT
OC: 01/30/05 R: 02
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:

Clemons, Inc. filed an appeal from a representative's decision dated March 3, 2005, reference 01, which held that no disqualification would be imposed regarding Steven Potter's separation from employment. After due notice was issued, a hearing was held by telephone on March 28, 2005. Mr. Potter participated personally. The employer participated by Jack Sorensen, General Sales Manager. Exhibits One through Six were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Potter was employed by Clemons, Inc., a car dealership,

from April 5, 2004 until February 1, 2005 as a full-time sales associate. He was discharged because he did not meet the employer's standards regarding the number of vehicles sold. He had not worked in auto sales before this employment but was provided training upon hire. He was expected to set a 90-day average of ten sales per month. Although he may have sold ten cars in a given month, he never met the 90-day average of ten sales.

The employer worked with and re-trained Mr. Potter in his job. He attended and actively participated in training classes. He accepted and utilized suggestions given by others on how to improve his sales performance. The employer has an "open" lot, which means that the customer belongs to whichever associate gets to that customer first. Mr. Potter was doing his part in going out to customers on the lot. He was at all times working to the best of his abilities. He had received several warnings advising him that his continued employment was in jeopardy because of his lack of sufficient sales.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Potter 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). A misconduct disqualification is imposed where an individual deliberately and intentionally acts in a manner that is contrary to the employer's interests or standards. See 871 IAC 24.32(1). In the case at hand, Mr. Potter was discharged because he was not making enough sales.

Mr. Potter actively participated in training and re-training. He was accepting of whatever assistance the employer provided in an effort to increase his sales. It was the employer's belief that he was working to the best of his abilities. Given these factors, the administrative law judge cannot conclude that Mr. Potter deliberately and intentionally acted in a manner that caused his sales to be low. It appears that this simply was not work that he was suited to. While the employer may have had good cause to discharge, conduct which might warrant a discharge from employment will not necessarily sustain a disqualification from job insurance benefits. Budding v. Iowa Department of Job Service, 337 N.W.2d 219 (Iowa App. 1983). For the reasons cited herein, it is concluded that disqualifying misconduct has not been established. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated March 3, 2005, reference 01, is hereby affirmed. Mr. Potter was discharged but disqualifying misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/tjc