

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABAYOMI S TIMMONS
Claimant

APPEAL NO. 12A-UI-05160-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOCUS SERVICES LLC
Employer

**OC: 04/08/12
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Focus Services, LLC, filed a timely appeal from an unemployment insurance decision dated April 27, 2012, reference 01, that allowed benefits to Abayomi S. Timmons. After due notice was issued, a telephone hearing was held May 30, 2012 with Mr. Timmons participating. Regional Recruiter Katharine Rossow participated for the employer.

ISSUE:

Was the claimant discharged for misconduct in connection with the employment?

FINDINGS OF FACT:

Abayomi Timmons was employed by Focus Services, LLC, from February 22, 2011 until he was discharged April 9, 2012. Mr. Timmons was discharged because the employer mistakenly believed that he had taken a break at an unauthorized time. After he was discharged he expressed his dismay at the employer's actions.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in this record establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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. See Iowa Code section 96.6-2. The employer's only witness had no firsthand knowledge of the event causing the separation. The person with firsthand knowledge was at work at the time of the hearing but was not called to testify. While hearsay evidence is admissible in an administrative hearing under the Iowa Administrative Procedure Act, the administrative law judge is not required to give it as much weight as he gives the sworn testimony of firsthand witnesses. In fact, the administrative law judge may infer from the fact that a party has not produced its best evidence that production of such evidence would disclose the weaknesses in the party's case.

While everything may have occurred just as Ms. Rossow testified, it is equally likely that it occurred just as Mr. Timmons testified. The employer has not established by a preponderance of the evidence that Mr. Timmons was insubordinate, aggressive or rude. Benefits are allowed.

DECISION:

The unemployment insurance decision dated April 27, 2012, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs