

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIA M VELASQUEZ
Claimant

APPEAL NO. 11A-UI-01578-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROVISIONS INC
Employer

OC: 12/19/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 31, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 8, 2011. Claimant participated personally. Employer participated by Vicki Yokem, Manager.

ISSUES:

The issues in this matter are whether claimant was discharged for misconduct and is overpaid unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

Employer discharged claimant on December 16, 2010 through claimant's supervisor who no longer works for the employer. The discharge does not appear to have been communicated to higher management. The exact reasons for the discharge are unknown, but do not establish misconduct.

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The administrative law judge holds that the evidence has not established that claimant was discharged for an act of misconduct when claimant was fired for uncertain reasons by a supervisor who did not testify, and appears not to have communicated the discharge decision to higher management.

DECISION:

The decision of the representative dated January 31, 2011, reference 02, affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/css