**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

**Appeal Number:**      **05A-UI-00146-AT**
**OC: 11-28-04**     **R: 03**
**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, 4<sup>th</sup> 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.

**TRAVIS J SAMPERS**
**2722 WAYNE AVE A**
**IOWA CITY IA 52240**

**GOVERNMENT EMPLOYEES**
 **INSURANCE COMPANY**
**<sup>C</sup>/<sub>O</sub> EMPLOYERS UNITY INC**
**PO BOX 749000**
**ARVADA CO 80006-9000**

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4301 E 53<sup>RD</sup> ST STE 300
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_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Government Employees Insurance Company (GEICO) filed a timely appeal from an unemployment insurance decision dated December 21, 2004, reference 01, which allowed benefits to Travis J. Sampers. After due notice was issued, a telephone hearing was held January 20, 2005, with Mr. Sampers participating and being represented by David Millage, Attorney at Law. Service Supervisor Keith Koot and Human Resources Supervisor Tina Kueter participated for the employer, which was represented by Marcy Schneider of Employers Unity, Inc. Employer's Exhibit One and Claimant's Exhibits A through E were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Travis J. Sampers was employed by GEICO from May 7, 2003 until he was discharged December 2, 2004. He last worked as a service counselor. Through March 2004 Mr. Sampers' performance met all company standards. Beginning in April 2004, the employer initiated a program to improve efficiency through lowering the average amount of time spent by service counselors on each phone call. The company offered and Mr. Sampers accepted additional training and coaching in an effort to meet the higher standards. He was unable, however, to meet the standard with any consistency. His other performance measures remained satisfactory.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Sampers was discharged for misconduct in connection with his work. 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code section 96.6-2. The employer provided ample evidence of additional training provided to Mr. Sampers, training which resulted in an improvement in Mr. Sampers' average handling time. The improvement, however, was not sufficient to meet the revised company standard. The employer has not established that Mr. Sampers willfully and deliberately failed to improve as much as required or that he carelessly or negligently failed to improve. The evidence persuades the administrative law judge that the claimant's best effort was insufficient to meet the company's needs. While this establishes just cause for discharge, it does not establish misconduct as that term is used in the law of unemployment insurance. Benefits are allowed.

DECISION:

The unemployment insurance decision dated December 21, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

pjs/b