

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY S CHURCHILL
Claimant

APPEAL NO. 10A-UI-06596-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VIOX SERVICES INC
Employer

OC: 04/04/10
Claimant: Appellant (1)

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's April 27, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. Telephone hearings were held on June 24 and July 12, 2010. The claimant participated in the hearings. Don Boyd and William Hayes testified on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in January 2009. He worked as a full-time mobile mechanic. Hayes, the operations supervisor, supervised the claimant.

In February 2009, Hayes talked to the claimant about work performance issues. On July 28, 2009, Hayes gave the claimant his performance review. The performance review noted problems with the claimant's work performance. Some of the branches the claimant serviced were assigned to other mechanics because of the claimant's unsatisfactory work performance. The claimant's hours were reduced from 40 to 32 hours a week after some of his work sites were transferred to other mechanics. Hayes told the claimant that with respect to the Onawa branch, he had to go there twice a month and spend a minimum of six hours when he went there. When the GPS report indicated the claimant spent two hours and 25 minutes at the Onawa location on October 23, 55 minutes on October 28, and one hour on November 9, the employer gave the claimant a written warning on November 21, 2009. The employer again informed the claimant that he had to spend of minimum of 12 hours a month at the Onawa location. The employer warned the claimant that if problems continued, he would be discharged.

In December the claimant spent a total of 2 hours and 45 minutes at Onawa. In January he was in Onawa one hour and 45 minutes. In February he was in Onawa a total of two hours. On March 10, Hayes visited two of the claimant's branches and received complaints about the claimant's unsatisfactory work. One of the branches Hayes visited was Onawa.

On March 19, 2010, the employer discharged the claimant for failing to do his job satisfactorily and for failing to follow the employer's directive to spend a minimum of 12 hours a month providing service to the Onawa location. Instead of following the employer's instructions, the claimant left Onawa after he completed the checklist of jobs he needed to do. To complete the list of jobs the claimant needed to do at each visit required a minimum of two hours.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant knew or should have known his job was in jeopardy if he did not spend a minimum of 12 hours a month at the Onawa location. Even after the employer told him more than once about the amount of time he had to work in Onawa a month, the claimant failed to follow this directive. While unsatisfactory job performance does not constitute work-connected misconduct, the claimant's repeated failure to work at the Onawa location a minimum of 12 hours a month constitutes an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for work-connected misconduct. As of April 4, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's April 27, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 4, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed