

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANTE D HUNTER
Claimant

APPEAL NO. 14A-UI-12701-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & COMPANY
Employer

**OC: 03/16/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Dante Hunter (claimant) appealed a representative's December 5, 2014, decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits after his separation from employment with Sears Roebuck & Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 16, 2015. The claimant participated personally. The employer participated by Nathan Clark, Store Manager. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 11, 2014, as a part-time electronics sales associate. He completed an on-line application form from his home. While completing the form, the site repeatedly stopped working. The claimant called the employer's human resources person to help him with the process. The claimant believed he entered all the information accurately. At the time of hire he provided the employer with his driver's license showing his birthday, January 7, 1977. Also at the time of hire, he completed tax withholding/exemption forms with his January 7, 1977, birthdate.

On November 19, 2014, the employer was investigating another matter when it discovered the claimant's application listing his birthday as January 1, 1977. The claimant was unaware the application listed the incorrect date. The claimant believes the mistake was inadvertent or a result of problems with the internet. Address information on the application also appeared in an incorrect location. The employer terminated the claimant on November 19, 2014, for falsifying his application with an incorrect birthdate. If the correct birthdate had been listed, the employer would have discovered other information about the claimant that would have prevented the employer from hiring him.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

Misconduct serious enough to warrant a discharge is not necessarily serious enough to warrant a denial of unemployment benefits. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). In the present case, the employer must prove that the claimant willfully and deliberately falsified his Application for Work form. The employer has not proven the one incorrect keystroke on the computer was willful or deliberate. The claimant followed up with

other documentation containing the correct information. The employer did not cross-reference the claimant's identification with his application before hiring the claimant. While understanding the concerns of the employer, the judge does not believe it has established the claimant willfully or deliberately falsified the application. Therefore, the claimant is eligible to receive unemployment insurance benefits.

DECISION:

The representative's December 5, 2014, decision (reference 03) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs