

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAYNE M ENGLUND

Claimant

APPEAL NO: 10A-UI-08217-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAD DEERY MOTORS

Employer

OC: 05/02/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The employer appealed a department decision dated May 24, 2010, reference 01, that held the claimant was not discharged for misconduct on May 1, 2010, and benefits are allowed. A telephone hearing was held on July 26, 2010. The claimant participated. Matt Meyer, Sales Manager, Nick McCutcheon, GM, and Val Watson, Sales Manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on November 24, 2008 and after a brief absence on August 31, 2009, he was re-hired on September 3. The claimant last worked as a full-time sales consultant on May 1, 2010. Due to an incident in early April 2010, the employer acquired knowledge that claimant may have been involved in an attempted insurance fraud matter.

On May 1, the claimant walked out of a sales meeting. After the meeting, the claimant was instructed he was not to sell cars until he talked with GM McCutcheon. The claimant grew impatient with McCutcheon who was busy with customers and trying to arrange a meeting with his sales managers (Meyer and Watson) and the claimant to discuss a list of items in addition to leaving the sales meeting incident. Claimant told McCutcheon he was going across the street to where he lived, and McCutcheon responded if you go, take your stuff with you, you no longer have a job here. After some argumentative claimant comments, McCutcheon told him to get – get away from me, and claimant left. The employer considers the claimant's leaving employment is a voluntary quit.

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 1, 2010.

The claimant's statement he was leaving to go across the street (from the dealership) to where he resides is not a voluntary quit of employment. The claimant's conduct of walking-out of the sales meeting caused Meyer to request that he not sell cars until he talked to GM McCutcheon. Since the claimant could not work, he grew impatient with him when he was unable to have the meeting that precipitated his statement he was leaving, not quitting employment.

Since the employer chose to treat the employment separation as a quit, it did not offer or reply upon any claimant misconduct that may have occurred on May 1. What is difficult to understand is why the employer would have continued to employ the claimant after he disclosed in early April an attempt at insurance fraud.

DECISION:

The department decision dated May 24, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on May 1, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs