

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT R MILLER

Claimant

APPEAL NO. 10A-UI-13309-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA DEPT OF TRANSPORTATION

Employer

OC: 08/02/09

Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 16, 2010 reference 01 that held he was discharged for misconduct on July 29, 2010, and that denied benefits. A telephone hearing was held on November 10, 2010. The claimant, and Peggy Phipps, employee/union representative, participated. The employer elected not to participate.

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 full-time employment as a full-time mixer on December 11, 1994, and last worked for the employer as a survey party chief sometime in June 2010. After his May 2010 performance review, the employer placed claimant on administrative leave with pay in June. The employer terminated the claimant on July 29. After a claimant grievance, the claimant and employer executed a settlement agreement in September 2010 that contained several provisions. One provision was that the employer would not contest claimant's unemployment claim, and it allowed him to submit a resignation.

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.

The administrative law judge concludes the employer has not established claimant was discharged for misconduct in connection with employment on July 29, 2010. The employer elected not to participate in this hearing and offer evidence of job-disqualifying misconduct.

DECISION:

The department decision dated September 16, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on July 29, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw