

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD A DUNCAN

Claimant

APPEAL NO: 13A-UI-02570-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ABBEE CARPETS OF DAVENPORT INC
ABBEE CARPET GALLERY**

Employer

OC: 01/06/13

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 March 1, 2013, reference 01, that held the claimant was not discharged for misconduct on December 18, 2012, and benefits are allowed. A telephone hearing was held on March 29, 2013. The claimant participated. Bill Dailey, President and Linda Bailey, HR/Payroll representative, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment pursuant to a written contract on June 11, 2012, and last worked for the employer as a full-time sales person on December 18, 2012. He was required to meet a monthly sales quota as set forth in his contract. He did not meet that quota during his five plus months of employment. He was discharged by his sales manager on December 18 without any prior written warning.

The employer received the notice of claim. When it protested claimant's discharge it marked through "for misconduct" and it stated "for not meeting requirement of contract."

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 December 18, 2012.

The unemployment issue is not whether employer has the right to terminate an employee for failing to meet contract requirements but whether there is job disqualifying misconduct. Failing to meet sales quota is not per se misconduct. The absence of any written warning issued to claimant that he was failing to do something or deliberately disregarding some instruction is evidence there was no misconduct.

The employer acknowledged that the claimant was not discharged for misconduct, but his failure to make a sales quota. While the employer had a good cause to terminate claimant based on the job performance quota issue, it does not constitute job disqualifying misconduct.

DECISION:

The department decision dated March 1, 2013, reference 01, is affirmed. The claimant was not discharged for misconduct on December 18, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css