

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA M MCADOO

Claimant

APPEAL NO. 10A-UI-11308-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

STATE FARM INSURANCE

Employer

OC: 12/27/09

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 August 4, 2010, reference 01, that held the claimant was not discharged for misconduct on June 9, 2010, and that allowed benefits. A telephone hearing was held on September 29, 2010. The claimant did not participate. Larry Horbach, Agent, 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 June 1, 2010 as a full-time service and sales person to sell life and health insurance and last worked for the employer on June 9. Prior to hire through Spherion, the claimant had failed at least one attempt to pass her licensing test in order to sell insurance products. The claimant failed to pass the test on her third attempt. The employer has a rule that an individual who fails to pass the licensing test on the third attempt is no longer employable.

The claimant failed to respond to the hearing notice.

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 June 9, 2010.

It is apparent the claimant lacked the ability and skill level to pass the insurance licensing requirement, which is not misconduct. The claimant made a good-faith effort to pass the test by taking it three times.

DECISION:

The department decision dated August 4, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on June 9, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw