

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABRAM D FREIN
Claimant

APPEAL NO. 11A-UI-16506-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG TEN RENTALS INC
Employer

**OC: 11/27/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Abram Frein, filed an appeal from a decision dated December 21, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 30, 2012. The claimant participated on his own behalf. The employer, Big Ten Rental, participated by President Brian DeCoster.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Abram Frein was employed by Big Ten Rentals from August 20, 2010 until November 30, 2011 as a full-time office clerk. For some time President Brian DeCoster had been having concerns because the claimant was not getting much work done and he suspected he might be "loafing." In addition, other employees had said the claimant was watching videos on his company computer during the day.

Mr. DeCoster rearranged the surveillance video of the office to point directly at Mr. Frein's desk. On the evening of November 29, 2011, the employer watched video of the claimant's work area taken earlier that day. For a substantial time, 50 percent of the work shift, the claimant was watching a movie on the company computer. He was discharged the next day for not performing his work as required and for violating the company policy against using company computers for personal use.

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 claimant insists he was not watching movies but diligently performing his job duties. He could not explain why his co-workers would report contrary information to the employer, why he did not demand to see the surveillance video which showed him watching movies or why he did not protest his innocence on the termination paper.

The administrative law judge finds the employer more credible in this matter because he did observe the videos personally and saw the claimant loafing on the job, not performing his assigned job duties and misusing the company computer. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of December 21, 2011, reference 01, is affirmed. Abram Frein is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css