

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER VONAHNEN
Claimant

APPEAL NO. 09A-UI-11250-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NATIONWIDE MUTUAL INSURANCE CO
Employer

**Original Claim: 06-21-09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 29, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 20, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time retention agent for Nationwide Mutual Insurance from April 21, 2008 to June 6, 2009. He was hired and previously worked as a data entry operator. After approximately one year, his supervisor suggested he was ready to post for other jobs if he wanted to do so. He applied for a direct sales position and the employer said it did not think he was ready for that job yet but it would like him to apply as a retention agent. The employer gave him the position without an interview because he interviewed so well for the direct sales job. The claimant was in the third week of training when he received a phone call June 4, 2009, from Hiring Manager Megan Walker, who told him there may be a problem with placing him in his new position but she would get back to him. After training June 5, 2009, Ms. Walker told him that due to his past misdemeanor convictions for OWI, he could not be bonded and therefore he could not work as a retention agent. The claimant was honest about his criminal background on his application for employment when he was hired and when he submitted his application to the Iowa State Insurance Licensing Board before taking that test when training to be a retention agent. The licensing board sent a congratulatory e-mail to him when he passed the test. The claimant asked if he could return to his old job as a data entry operator and Ms. Walker said she was looking into that and instructed him to come to her office later. When he went in she said, "I have bad news and worse news." The corporate office stated it could not waive the criminal background problem even though the claimant was a good employee and that there was

nothing available in his old department. Ms. Walker told him June 6, 2009, would be his last day of employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The claimant was encouraged to apply for a direct sales position; and although he did not qualify for that job, the employer promoted him to a retention agent position without another interview. He was honest about his criminal misdemeanor charges when asked on the employment application and the Iowa State Insurance Licensing Board application. It was the employer's responsibility to make sure he was bondable before offering him a new position requiring that he be bonded. There is no evidence of intentional misconduct on the part of the claimant. Consequently, the

administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct as defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The July 29, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw