

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R SMITH
Claimant

APPEAL NO. 07A-UI-05174-SWT

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

NEXT GENERATION WIRELESS INC
Employer

**OC: 04/15/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 9, 2007, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 6, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Bill Bradford participated in the hearing on behalf of the employer with witnesses, Becky Thurn and Kristi Eastman. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a retail sales consultant from October 16, 2006, to April 9, 2007, in the North Liberty store. When the claimant was hired, he signed a compensation plan that stated that if he failed to meet monthly sales quota in two consecutive months or four times in twelve months he would be placed on a developmental action plan. The monthly quotas were 25 new activations, 25 retentions, \$875.00 in accessories, 150 percent vertical take rate, and 30 percent easy edge take rate.

On April 3, 2007, the employer placed the claimant on a developmental action plan because he had failed to meet the minimum sales quotas for January, February, and March 2007. Under the action plan, the claimant would be terminated if he failed to meet a weekly quota of seven new activations, seven retentions, \$218.75 in accessories, 150 percent vertical take rate, and 30 percent easy edge take rate.

On April 9, 2007, the employer discharged the claimant because for the previous week the claimant had two new activations, one retention, \$214.60 in accessories, 150 percent vertical take rate, and 30 percent easy edge take rate.

During the time the claimant worked for the employer, he genuinely tried to meet the employer's sales goals and expended an honest effort to generate business, but he was not successful in his efforts.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance 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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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).

While the employer may have been justified in discharging the claimant based on his sales production, work-connected misconduct as defined by the unemployment insurance law has not

been established. No willful and substantial misconduct has been proven in this case. The case law makes it clear that poor work performance without a showing of wrongful intent does not establish work-connected misconduct under the unemployment insurance law. Miller v. Employment Appeal Bd., 423 N.W.2d 211, 213 (Iowa App., 1988)

DECISION:

The unemployment insurance decision dated May 9, 2007, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css