

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JULIE M DANCER**

Claimant

**APPEAL NO: 10A-UI-09944-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HUMANA MARKET POINT INC**

Employer

**OC: 05/30/10**

**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 1, 2010, reference 01, that held the claimant was not discharged for misconduct on May 28, 2010, and benefits are allowed. A telephone hearing was held on August 30, 2010. The claimant, and her witness, former manager, Gary Christensen participated. The employer did not participate. The claimant exhibits were 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 testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on October 4, 2009, and last worked for the employer as a full-time salesperson on May 28, 2010. The employer discharged the claimant and manager Christensen for the same reason. The department issued a decision that Christensen was not discharged for misconduct, and benefits are allowed.

The employer representative was not available when called for the hearing at the number provided.

**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 May 28, 2010. The employer failed to participate in this matter and provide evidence of job disqualifying misconduct.

**DECISION:**

The department decision dated July 1, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on May 28, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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