

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISOPHER M. MACKSEY
Claimant

APPEAL NO. 09A-UI-15784-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACHENBAUGH, DENNIS A.
Employer

OC: 09/13/09
Claimant: Respondent (1)

Section 96.5-2-A – Misconduct.

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated October 9, 2009, reference 04, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 23, 2009. Claimant participated. Employer participated by Dennis Achenbaugh, Co-owner.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is in the vending business. The claimant was hired on September 2, 2009, to service the employer's vending machines. Dennis Achenbaugh, the owner, was going to be on vacation from September 5, 2009, through September 7, 2009. The claimant was trained to service only the vending machines at Sam's Club. The expectation was that eventually the claimant would service approximately 100 accounts.

The claimant performed poorly and the employer concluded that the claimant was unable to grasp the concepts of the business such as keeping track of tickets and the money bags. The claimant was terminated on September 16, 2009, after the employer saw the claimant could not do a job on which he had been previously trained.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes unsatisfactory conduct and failure in good performance as the result of inability or incapacity. The employer has the burden of proof to show misconduct.

The evidence in this case established that the claimant was unable to perform the requirements of the job. Mr. Achenbaugh testified that the claimant was unable to grasp the concepts of the job. Mr. Achenbaugh did not feel that the claimant would be able to do the job in a satisfactory manner and service the customers properly. The employer had good business reasons for terminating the claimant's employer.

The claimant's discharge, however, does not meet the legal definition of misconduct and therefore he is not disqualified from receiving unemployment insurance benefits. The claimant was incapable or unable to perform the job. Incapacity or inability is not deemed misconduct within the meaning of Iowa law. Benefits are awarded if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated October 9, 2009, reference 04, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css