

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAIR J MOORE
Claimant

APPEAL NO. 13A-UI-08894-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADM ALLIANCE NUTRITION INC
Employer

OC: 06/30/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Blair Moore (claimant) appealed a representative's July 23, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with ADM Alliance Nutrition, Inc. (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 6, 2013. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired in February 2008, as a full-time warehouse manager. The claimant signed for receipt of the employer's handbook. The warehouse sold products to dealers who in turn sold products to customers. In December 2012, the local community did not have a dealer to purchase the employer's products. The claimant expressed his concern to the employer and the employer told the claimant to wait and a solution would be forthcoming.

Starting in December 2012, the claimant allowed customers to come into the employer's warehouse to select items and write a check payable to the claimant for the retail price of the item. The claimant would pay the wholesale price for the item and keep the difference as a profit. On April 13, 2013, the employer discovered the claimant was conducting these transactions on the employer's property. The claimant stopped the sales.

On May 7, 2013, the employer began its investigation of the claimant's activity. The claimant said he voiced his concerns previously and nothing was done. The employer asked the claimant to provide copies of checks from customers by May 10, 2013. On May 17, 2013, the employer asked the claimant where the check copies were. The claimant stated he did not

keep any records or written invoices. The claimant indicated it would be too much work to provide anything to the employer. The employer told the claimant that the investigation would proceed without the claimant's documentation. On June 24, 2013, the employer completed its investigation and terminated the claimant

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. The claimant's actions were volitional. When a claimant intentionally disregards the standards of behavior that the employer has a right to expect of its employees, the claimant's actions are misconduct. The claimant was discharged for misconduct.

DECISION:

The representative's July 23, 2013, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs