

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LOUIS J FOGGIA JR
Claimant

AOSS MEDICAL SUPPLY INC
Employer

APPEAL NO: 10A-UI-02338-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/17/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 10, 2010, reference 01, that held he was discharged for misconduct on January 19, 2010, and benefits are denied. A telephone hearing was held on April 28, 2010. The claimant, and his Attorney, Shane Michael, participated. Dr. William Harrison, Business Development Director/Compliance Officer, participated for the employer.

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 or about February 9, 2009, and last worked for the employer as a full-time Midwest account manager on January 19, 2010. The employer discharged the claimant for insubordination and disrespectful behavior on January 19, 2010.

The employer has an employee manual. The manual describes employee conduct and work rules in section 7-01. Insubordination or disrespectful conduct is a violation of the conduct and work rules.

The claimant, CEO Liew, and ten other employees were involved in a weekly telephone conference call on January 18, 2010. While the claimant was reviewing his prior week job performance, the CEO questioned how he handled a certain client in an irate manner. When the claimant attempted to explain his conduct, the CEO interrupted him in loud manner. The claimant raised his voice in a further attempt to explain himself, but the CEO continued to berate him. Claimant requested to talk to the CEO outside of the conference call, but was denied. Claimant was disconnected from the conference call.

CEO Liew called claimant on January 19 and terminated him for a poor work performance. Prior to the termination, the claimant never received any prior written warning or discipline. The claimant had received a raise in pay about three weeks prior to his termination.

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 January 19, 2010.

While the claimant may have responded to the employer CEO in a loud manner, he did not disobey any instruction, use profanity, or make any threatening statement that constitutes job disqualifying misconduct. There is no evidence the claimant had previously received any written warning or discipline for similar conduct.

DECISION:

The department decision dated February 10, 2010, reference 01, is reversed. The claimant was not discharged for misconduct on January 19, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css