

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADY J MCCAWE
Claimant

APPEAL NO. 10A-UI-08812-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBERLY CHRYSLER PLYMOUTH INC
Employer

**OC: 05/02/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 9, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on August 5, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeff Weyland participated in the hearing on behalf of the employer with a witness, Andy Anderson.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a service technician for the employer from January 2007 to May 4, 2010. The claimant had received a verbal warning about leaving work without permission on March 19, 2010, and about having too many vehicles coming back for additional repairs.

On May 3, 2010, the service manager was convinced the claimant had deliberately hung up on him when he called the claimant about a repair job. The employer discharged the claimant on May 4, 2010, for insubordination for hanging up the phone and unsatisfactory work performance.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he never deliberately hung up on his supervisor. No willful and substantial misconduct has been proven in this case. Unsatisfactory work performance does not meet the definition of willful misconduct under the law.

DECISION:

The unemployment insurance decision dated June 9, 2010, reference 01, 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/pjs