

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SZYMON J BOJDOL**  
Claimant

**APPEAL NO. 100-UI-11173-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VOLT MANAGEMENT CORP**  
Employer

**OC: 03/28/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated May 4, 2010, reference 01, which denied benefits based upon his separation from Volt Management Corporation. After due notice, a telephone hearing was held on September 22, 2010. The claimant participated personally. The employer participated by Ms. Vicky Cam, Technical Coordinator.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Szymon Bojdol was most recently employed by Volt Management from August 19, 2009 until April 1, 2010 when he was discharged from employment. Mr. Bojdol worked as a warehouse worker in an outside location and was paid by the hour.

The claimant was discharged based upon the company's belief that Mr. Bojdol had not been reporting for scheduled work and had not been providing notification to the company of his impending absences. Prior to the claimant's discharge he had not received any warnings or counseling from the employer.

Mr. Bojdol's attendance record did not reflect full-time employment because the claimant had routinely left work with the permission of his supervisors at the facility where he was assigned prior to the end of the work shift when the claimant had completed his duties for the night. The claimant at times also had not worked when he had been informed that work was caught up and his services were not necessary. Mr. Bojdol did not object to working less than full time as he was a student and needed the additional time for study. The claimant was willing to work and did perform services to this employer when his services were needed by the employer. At the times when the claimant was not present he was absent with the permission of his immediate supervisors. Prior to being discharged the claimant had received no warnings or counseling from the company indicating that the employer was dissatisfied with his attendance.

## REASONING AND CONCLUSIONS OF LAW:

The employer has the burden of proof in this matter. See Iowa Code section 96.6.2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unable to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

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.

Based upon the evidence in the record the administrative law judge concludes that the employer has not sustained its burden of proof in showing intentional disqualifying misconduct on the part of the claimant. The claimant believed his attendance at work was satisfactory and had not been warned or counseled by the employer prior to being discharged. Benefits are allowed providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 4, 2010, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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