

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C ROBBINS

Claimant

THOMAS L CARDELLA & ASSOCIATES INC

Employer

APPEAL NO: 12A-UI-07040-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/26/11

Claimant: Appellant (1)

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 June 5, 2012, reference 01, that held he was discharged for misconduct on May 10, 2012, and benefits are denied. A hearing was held in Cedar Rapids, Iowa on August 15, 2012. The claimant did not participate. Dillon Hutton, Coralville Center Manager, and Marcie Schneider, Representative, participated for the employer. Employer Exhibits 1, 2 & 3 were received as evidence.

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 in May 2009, and last worked for the employer as a full-time TSR on May 10, 2012. The claimant had performed his job in a satisfactory manner up to his last assigned program.

The employer provided claimant with training on a new six-month program that had goal requirements. Claimant met the goals up to the latter period of his employment. When he failed to meet the goal, he was put on a three-day action plan on April 27, 2012. His job performance was significantly below goal and the performance level of other TSR's working on the same program. When the employer monitored his customer calls, he failed to properly follow program requirements and he delivered the information with indifference.

The employer continued to monitor claimant during the action plan period and he continued his failure to make goal. He made no attempt to improve his performance. The employer terminated him for an unsatisfactory job performance on May 10. The center manager noted claimant had the job skill necessary to meet the program goal but failed to make the necessary effort to do it.

The claimant failed to appear for the hearing.

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 established that the claimant was discharged for misconduct in connection with employment on May 10, 2012, for an unsatisfactory job performance.

The claimant had demonstrated for some 2 ½ years that he could do satisfactory work. He was warned when his job performance was significantly below his skill level and experience to do good work. He was warned by the action plan. His election not to perform to the work performance standard as established by the employer constitutes job disqualifying misconduct.

DECISION:

The department decision dated June 5, 2012, reference 01, is affirmed. The claimant was discharged for misconduct on May 10, 2012. Benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs