

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANASTACIO R RAYGOZA
Claimant

APPEAL NO. 12A-UI-08832-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

OC: 06/24/12
Claimant: Appellant (2)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Anastacio Raygoza, filed an appeal from a decision dated July 13, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 10, 2012. The claimant participated on his own behalf and Steven Rhodes acted as interpreter. The employer, Spherion, participated by Account Manager Teresa Ray.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Anastacio Raygoza was employed by Spherion from May 9, 2011 until June 22, 2012. During that time, he had one assignment at Hewlett Packard (HP). The client company requested him to be removed on June 22, 2012, because he had been driving a forklift recklessly and was allegedly making long distance international calls on the HP phone system. The claimant denied these allegations.

Amner Martinez told the claimant he was fired after receiving the request from HP. Mr. Raygoza had asked him at that time if there was other work available and Mr. Martinez said they could discuss it at a meeting on Monday, June 25, 2012. At that meeting, Account Manager Teresa Ray said there was no work available because he had been fired.

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 claimant was removed from the assignment at the request of the client company. Mr. Raygoza denied using the company phones for any purpose except to call another area of the facility and denied reckless driving of the forklift. The employer did not provide any evidence of either of these allegedly violations. No testimony was provided from anyone at HP who might have seen reckless behavior on the forklift or any record of long distance international calls made by the claimant.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The representative's decision of July 13, 2012, reference 01, is reversed. Anastacio Raygoza is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw