

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MILTON W ANANIA**  
Claimant

**APPEAL NO. 12A-UI-15561-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY CARTON COMPANY**  
Employer

**OC: 08/26/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 17, 2012 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 22, 2012. Claimant participated and was represented by Andrew LeGrand, attorney at law. Employer participated through Human Resources Director Jennifer Humphrey. Employer's Exhibits 1 through 3 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a sales manager in the Des Moines area (confidential shredding services) from July 9, 2012 and was separated from employment on August 28, 2012. He told the employer when interviewed in late May or early June 2012 he sold his business, but the employer did not ask the name of the company that bought him out or about his insurance license status. When interviewed in late May 2012, he agreed to and passed a background check, so the employer did not look for further information on the internet. She did not check with the Iowa insurance commissioner's office about his license status. After claimant began the employment, vice president of sales and marketing Ali Hayford found by a public record internet search that his insurance license was revoked on May 9, 2011. (Claimant's Exhibit 1) The employer has a large customer base in the Des Moines insurance industry and was concerned he would be unable to solicit or secure its business because of the revocation order.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy; but, if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs

potential liability for unemployment insurance benefits related to that separation. Since the employer had public access to the insurance license status information during the interview and hiring period and did not ask questions about it, there is no evidence claimant was dishonest about his status and even had he done so, the final act for which the claimant was discharged was not current. Benefits are allowed.

**DECISION:**

The September 17, 2012 (reference 01) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw