

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on September 8, 2003, as a full-time buyer. The claimant had trouble keeping up with his work at times. Other times he was able to perform his work satisfactorily. The claimant was fully trained for his job and understood the procedures. There were a number of superiors the claimant could have asked for help.

On May 2, 2005, the employer met with the claimant after a below average desk audit. The employer verbally warned the claimant about his performance. On September 6, 2005, the employer issued the claimant a written warning for substandard work. The claimant allowed purchase orders to be unconfirmed. This situation had the potential to force the employer to pay for shortages.

In December 2004, the claimant placed an order for product with a delivery date in July 2005. The order went unconfirmed by the claimant for six months. In June 2005, the claimant discovered the problem and confirmed the order for delivery in November/December 2005. The claimant did not alert the employer or make provisions to spot buy the product. The employer discovered the problem on or about September 20, 2005. The claimant's failure to perform his job functions cost the employer \$40,000.00. The employer terminated the claimant on September 22, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant was discharged for misconduct. For the following reasons the administrative law judge concludes he was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer provided evidence of intent at the hearing. The claimant's poor work performance was not a result of his lack of training. The claimant was able to perform the work if he chose to do so. The claimant's poor performance was willful. The employer has established that the claimant was discharged for misconduct. Benefits are denied.

DECISION:

The representative's October 13, 2005 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

bas/pjs