

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RANDAL E MCCULLOUGH**

Claimant

**APPEAL NO: 10A-UI-00963-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**POMEYOY IT SOLUTIONS INC  
POMEROY COMPUTER RESOURCES**

Employer

**OC: 12/20/09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
871 IAC 24.32(8) – Current Act

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated January 12, 2010, reference 01, that held he was discharged for misconduct on December 20, 2009, and benefits are denied. A telephone hearing was held on February 25, 2010. The claimant, and his Attorney, Kay Johansen, participated. Erica Breitenbach, Employee Relations Generalist, and Tony Barrier, Manager, participated for the employer.

**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 full-time employment on April 9, 2007, and last worked for the employer on assignment for client, IBM, at Schneider Electronics on December 4, 2009. The claimant and another employee received a written warning on October 21, 2008 for client dissatisfaction and lack of teamwork.

An IBM representative notified the employer on December 2, 2009 requesting claimant's removal from his assignment at Schneider Electronics for client dissatisfaction. Client satisfaction is the number one employer priority. The claimant was considered for further work, but the employer had no other client assignments available in the immediate area. The claimant was discharged on December 4 when he received an employer COBRA letter.

## 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.

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 administrative law judge concludes the employer has failed to establish any current act of misconduct and/or misconduct in the discharge of the claimant on December 4, 2009.

Although the employer had verbal conferences with the claimant about his job performance after the October 2008 written warning, he was not issued any further discipline until his discharge on December 4. The employer could not establish any final incident of misconduct leading to discharge. The moving cause of the discharge was client dissatisfaction, not employer, and the employer was willing to offer continuing employment. Job disqualifying misconduct is not established.

**DECISION:**

The department decision dated January 12, 2010, reference 01, is reversed. The claimant was not discharged for any current act and/or misconduct on December 4, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs