

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAY C JOHNSTON

Claimant

APPEAL NO. 08A-UI-03658-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETE HARKNESS CHEVROLET

BUICK PONTIAC INC

Employer

**OC: 03/16/08 R: 03
Claimant: Appellant (1)**

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, Ray Johnston, filed an appeal from a decision dated April 10, 2008, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on April 30, 2008. The claimant participated on his own behalf. The employer, Pete Harkness Chevrolet, participated by Operation Director Joseph McGlennon.

ISSUE:

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

FINDINGS OF FACT:

Ray Johnston was employed by Pete Harkness Chevrolet from August 18, 2007 until February 16, 2008. He was a full-time service advisor at the time of separation. He had received two written warnings on January 28, 2008, for failing to give a proper estimate to the general manager for refurbishing a used car and for using inappropriate language because he was upset when he learned a cousin had not purchased a car from him when he had still been a salesman at the dealership.

On February 15, 2008, he received another written warning when he had failed to follow policy and show "fluid samples" to a customer. Policy requires a service advisor to take samples of various vehicle fluids such as engine oil, transmission fluid, transmission fluid, and coolant. The samples are placed on a tray next to samples of the same fluids, which are new, for the customer to see and compare. He was advised his job was in jeopardy.

On February 26, 2008, the claimant again did not show the customer the fluid samples. He had decided on his own the fluids were too “new” to need replacement and did not show the fluid samples. However, the samples are to be shown every time without exception. This was witnessed by General Manager Jeff Woodward and reported to Operations Director Joseph McGlennon. The operations director reviewed the claimant’s disciplinary record and determined to discharge him. Mr. Johnston was notified of the discharge by Mr. Woodward the same day.

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 had been advised his job was in jeopardy as a result of his failure to follow company policies. He had received his final warning for failing to do the fluid samples a week before he was fired for failing to do it again. This is not a matter of lacking the necessary skill to do a job to the employer's satisfaction but a deliberate refusal to follow clear and concise policy and procedures. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

DECISION:

The representative's decision of April 10, 2008, reference 01, is affirmed. Ray Johnston is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css