

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**RAMON K ZIADEH  
115 WHISPERING WIND  
CENTER POINT IA 52213**

**HOME REPAIR TEAM INC  
2698 RESERVOIR DR NE #3  
NORTH LIBERTY IA 52317**

**ROBERT WILSON  
ATTORNEY AT LAW  
210 – 2<sup>ND</sup> ST SE  
CEDAR RAPIDS IA 52401**

**Appeal Number: 04A-UI-11376-CT  
OC: 09/26/04 R: 03  
Claimant: Appellant (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ramon Ziadeh filed an appeal from a representative's decision dated October 15, 2004, reference 01, which denied benefits based on his separation from Home Repair Team, Inc. After due notice was issued, a hearing was held by telephone on November 17, 2004. Mr. Ziadeh participated personally and was represented by Robert Wilson, Attorney at Law. The employer participated by Julie Hajek, General Manager/Owner, and Rob Hajek, President/Owner. Exhibits One through Nine were admitted on the employer's behalf.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Ziadeh was employed by Home Repair Team, Inc. from August 18, 2003 until September 20, 2004. He was last employed full time as a field technician. He was discharged for having personal telephone calls at work and for failing to perform assigned work.

Mr. Ziadeh had a cellular telephone issued by the employer for work-related use. Although the policy prohibits personal calls on the cellular telephone, the policy also provides that the employee is to note on the monthly printout as to whether calls were personal or business. The policy also notes that employees will be charged for personal calls if the employee's usage exceeds the 250 minutes of airtime allowed per month. Mr. Ziadeh was reminded that the telephone was only for business purposes on April 21 and June 10, 2004. On September 13, the employer received a telephone bill and noted that Mr. Ziadeh spent 38 minutes on the telephone on August 31 when he should have been working. The employer was in the process of reviewing the bill when two other incidents occurred which triggered the decision to discharge Mr. Ziadeh.

On September 15, Mr. Ziadeh was directed to go to a home and make sure a scuttle hole was framed out at least 14 inches from the bottom of the sheetrock so that insulation could be installed. Mr. Ziadeh went to the location but did not make sure the scuttle hole was positioned where the employer wanted it. Because he saw insulation inside, he assumed that insulation had already been installed. Mr. Ziadeh reported to the employer that the assigned work had been completed. The employer did not learn of the failure until the customer called on September 16. Because the scuttle hole had not been framed out correctly, the insulation could not be installed and the subcontractors had to leave the site.

On September 15, Mr. Ziadeh was told that installation of a mantle was a priority for the home he was working in that day. He was told that working on drawer fronts was not a priority and could wait until December, if necessary. Rather than install the mantle as directed, Mr. Ziadeh worked on the drawer fronts. The record submitted by Mr. Ziadeh to the employer reflecting the work performed on September 15 does not indicate that a mantle was installed.

Because Mr. Ziadeh was spending work time on the telephone and because he failed to perform the assigned tasks on September 15, he was discharged on September 20, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Ziadeh was separated from employment for any disqualifying reason. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Part of the reason for Mr. Ziadeh's discharge was his use of the employer-issued cellular telephone for personal calls. The employer's policy regarding personal calls is contradictory. Although it prohibits personal calls, it also tells the employee that he will be charged for personal calls that cause him to exceed the allowable airtime. The administrative law judge considers this at least tacit approval to use the telephone for personal calls. Moreover, the warning Mr. Ziadeh received concerning his personal usage only indicated that the telephone would be taken away if he continued to have excessive personal calls. It did not indicate that he would be discharged as a result.

It was the employer's contention that Mr. Ziadeh could not have been working during the time that he was on personal calls. This contention has not been established by complete evidence. The employer only assumes that no work activity was being performed while Mr. Ziadeh was on the telephone. It is possible for an individual to talk on the telephone and continue working. The employer has failed to establish that Mr. Ziadeh falsified his time record by not accounting for the time he was on personal calls.

The evidence does establish that Mr. Ziadeh failed to follow instructions in the performance of his job. He was given a clear instruction to make sure the scuttle hole was framed out at a specific height. He did not do so. The fact that he saw insulation inside the hole should have at least alerted him to the need to contact the employer and question whether the insulation had already been installed and, if so, what he should do about the requested framing. Mr. Ziadeh was also given a clear instruction to install a mantle and not work on drawer fronts. In spite of the instructions, he did not work on the mantle but did the drawer fronts instead. His disregard for the instructions given him had the potential of delaying the completion of work on homes. Homeowners who experience unwarranted delays are not likely to recommend the contractor involved to friends and may even warn against using that contractor. Mr. Ziadeh's failures to perform the assigned work on September 15 evinced a substantial disregard for the employer's interests and standards. For the above reasons, it is concluded that disqualifying misconduct has been established and benefits are denied.

DECISION:

The representative's decision dated October 15, 2004, reference 01, is hereby affirmed. Mr. Ziadeh was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

cfc/kjf