

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW L SMITH
Claimant

APPEAL NO: 13A-UI-03611-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLL DISTRIBUTING LLC
Employer

OC: 02/24/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 22, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 29, 2013. The claimant participated in the hearing. Deb Marchesano, Human Resources Director and Skylar Rawlins, Convenience Store Team Leader, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time account manager within the Convenience Store Division for Doll Distributing from February 2, 2003 to February 28, 2013. He was discharged for lack of execution and outdated product being on the shelves.

On November 15, 2011, the claimant received a verbal warning in writing for having outdated product on the shelves of the convenience stores he serviced and lack of execution. Jerry Braatz, National Sales Manager, calls on convenience store customers and sends his notes on what they need at those chains to Skylar Rawlins, Convenience Store Team Leader. Mr. Rawlins then instructs the employees on his team what to do with that information. The claimant was responsible for making sure the stores had shelf strips with prices, product displays, signage and promotions on the floor of the stores, and coupons on the shelves with the products. The employer is dealing with perishable alcohol and one energy drink product and close to code product, which means within 30 days of expiration, must be rotated and outdated product must be removed. The claimant was not doing any of these tasks consistently.

On November 1, 2012, the employer put the claimant on a performance improvement plan because of three problems it had with the claimant's work. The claimant was ranked number one in Des Moines for outdated product returned during a two week period in September 2012 and was not rotating his product; he was not communicating with the drivers about what needed to be done with each account; and he was not moving the close to code product in a timely manner.

On December 14, 2012, the employer did a follow up on the performance improvement plan. The claimant still had a great deal of out of code product coming back - 62 cases of out of code product in November 2012 and 33 cases to date in December 2012. He still was not communicating with Mr. Rawlins about moving product that was close to code. Mr. Rawlins indicated he was going to monitor the claimant for the next 30 days. Mr. Rawlins also asked the claimant to prepare an improvement plan regarding his execution and wanted the claimant to detail what organizational skills he was going to use to improve his performance. He asked the claimant to have the plan ready by December 28, 2012, but due to the holidays changed the due date to January 11, 2013.

Also on December 14, 2012, the claimant received a second written warning because Mr. Braatz sent an email to all convenience store account managers November 19, 2012, stating they were to start placing wine in certain Kum & Go stores but the claimant failed to do so. The situation escalated to a second written warning without a first written warning due to the severity of the production situation. The claimant signed the warning December 18, 2012.

On January 16, 2013, the claimant received a written warning and three day suspension because he never provided the written improvement plan, even after the deadline was extended. The claimant was asked if he understood and knew Mr. Rawlins expectations and whether he needed more training and the claimant stated he did understand the expectations but did not need any further training. Mr. Rawlins told the claimant he would give the claimant until February 1, 2013, to provide his written plan and also asked him to complete a rotation schedule for the next four weeks. Mr. Rawlins told the claimant that was the last step before termination would occur and the claimant stated he understood and did not have any questions. He was also asked if there was anything preventing him from doing his job and the claimant stated maybe he needed to slow down a little bit.

The claimant completed the written plan and four week rotation schedule February 1, 2013. On February 27, 2013, the claimant was absent and Mr. Rawlins had to run his route for him. He found several accounts had out dated product and old point of sale items. Mr. Rawlins also did a routine car check to see if the claimant had point of sale items and signage and the claimant did not have any point of sale information or signage ready for the day. He also should have had a case card, display signs, shelf strips with pricing information and, according to the claimant's own performance plan, a box with each account contained in a folder so he could read the folder, grab the point of sale items and go into the accounts.

Mr. Rawlins determined the claimant was insubordinate and not executing his job correctly or in the manner expected by the employer. He failed to perform the essential functions of an account manager and consequently his employment was terminated February 28, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 received a verbal warning in writing, a performance improvement plan, a second written warning, and suspension during the last 15 months of his employment. He was not completing the most essential components of his job, such as product rotation, expiration and close to code responsibilities. He was not properly placing shelf strips, signage and point of sale items in the stores and failed to follow Mr. Braazt's email directing convenience store account manager's to place wine in certain Kum & Go stores. The claimant performed his job ably for several months at a time, which indicates the claimant was capable of performing his job to the employer's expectations. Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits must be denied.

DECISION:

The March 22, 2013, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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