

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC D SHATTO

Claimant

APPEAL NO. 11A-UI-07361-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREEN MAX DISTRIBUTORS INC

Employer

OC: 02/13/11

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant appealed a department decision dated May 24, 2011, reference 02, that held he voluntarily quit without good cause on December 1, 2010, and which denied benefits. A telephone hearing was held on June 29, 2011. The claimant participated. The employer did not participate.

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 witness and having considered the evidence in the record, finds: The claimant began employment as a full-time technical support mechanic on August 21, 2008, and last worked for the employer on December 1, 2010. The claimant received a written warning for internet social networking at work, and he approached the employer/owner about what was and was not permissible. Claimant believed they reached an understanding about what he was allowed to do.

Claimant was discharged by a supervisor for internet use on December 1, 2010, and he was not allowed to contact the employer/owner about the issue. The employer failed to respond to the hearing notice.

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 administrative law judge concludes the employer has not established claimant was discharged for misconduct in connection with employment on December 1, 2010. Claimant denies he quit his job, and the employer failed to participate in this hearing and offer evidence of a discharge for job-disqualifying misconduct.

DECISION:

The department decision dated May 24, 2011, reference 02, is reversed. The claimant was not discharged for misconduct on December 1, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw