

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN E STOEN
Claimant

APPEAL NO. 16A-UI-05965-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOMEMAKERS PLAZA INC
Employer

**OC: 05/01/16
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Homemakers Plaza (employer) appealed a representative's May 19, 2016, decision (reference 01) that concluded Kathryn Stoen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 24, 2016. The claimant participated personally. The employer participated by Jeff Sinnwell, Sales Manager, and Jamie Smith, Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 22, 2010, as a full-time sales specialist. The claimant signed for receipt of the employer's handbook on November 23, 2010. The employer started a policy in January 2016, that said an employee who fails to meet the written add-on standard of \$3,500.00 in sales for three out of six consecutive months will be terminated. Add-ons were accessories. The only way the claimant felt she could meet her goal was to sell at least one \$600.00 adjustable mattress base each month.

On February 1, 2016, the employer issued the claimant a written warning for falling short of her add-on goal for January 2016, by \$1,342.00. The claimant sold an adjustable mattress base in January 2016. The claimant's total sales exceeded the company's standards by \$6,424.00. The employer notified the claimant that further infractions could result in termination from employment. On April 8, 2016, the employer issued the claimant a written warning for falling short of her add-on goal for March 2016, by \$1,581.00. The claimant did not sell an adjustable mattress base in March 2016. The claimant's total sales exceeded the company's standards by \$17,655.00. The employer notified the claimant that further infractions could result in termination from employment. This warning indicated she should attend a training class.

The claimant spoke to the trainer on April 15, 2016. The trainer handed her seven to ten white sheets of paper containing drawings of items. The trainer told her to write down how she would sell those items. Afterwards, the trainer told her to bring up accessories to every customer every time. There was no other recommendations from the trainer.

On May 1, 2016, the employer terminated the claimant for falling short of her add-on goal for April 2016, by \$582.00. The claimant sold an adjustable mattress base in April 2016. The claimant's total sales for April 2016, exceeded the company's standards by \$26,961.00. The claimant tried to meet the goal each month.

The claimant filed for unemployment insurance benefits with an effective date of May 1, 2016. The employer participated personally at the fact-finding interview on May 18, 2016, by Jamie Smith.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. Huntoon v. Iowa Department of Job Services, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent at the hearing. The claimant's poor work performance was a result of poor training or lack of sales opportunities. Consequently the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 19, 2016, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs