

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS C THURMOND
Claimant

APPEAL NO. 07A-UI-00935-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE BRANDS CORP
Employer

**OC: 12/31/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Thomas C. Thurmond (claimant) appealed a representative's January 22, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Interstate Brands Corporation (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 12, 2007. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate at the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in 1993. Prior to his employment separation, the claimant worked full-time. About a year ago, the employer gave the claimant a warning for reporting to work late. The employer told the claimant his job was in jeopardy if he continued to report to work late or failed to call the employer when he was unable to work as scheduled. The claimant had no further attendance problems until December 21, 2006.

On December 22, the claimant was scheduled to work at 4:30 p.m. The vehicle the claimant was in broke down around 3:00 p.m. between Cedar Rapids and Waterloo. The claimant did not have his cell phone to call the employer. The claimant walked to a business where he could make a collect call to his mother. The claimant asked his mother to call the employer on his behalf and let the employer know he was unable to work that day. The claimant understood his mother notified the employer that the claimant was unable to work as scheduled on December 22.

When the claimant reported to work on December 23, the employer suspended him for failing to work or notify the employer the day before. On January 10, 2007, the employer informed the claimant he was discharged for his absence on December 22, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. Even though the employer gave the claimant a warning a year ago for attendance issues, the facts show the claimant improved his attendance. On December 22, 2006, the claimant had no knowledge he would become stranded between Cedar Rapids and Waterloo because the car he was in broke down. The claimant took reasonable steps to notify the employer about his absence when he called his mother collect and asked her to contact the employer. Under these facts, the claimant did not commit work-connected misconduct. As of December 31, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 22, 2007 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

December 31, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css