

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES G MARSH
Claimant

APPEAL NO: 13A-UI-10937-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FQSR LLC
Employer

OC: 08/11/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 20, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer responded to the hearing notice and was called for the hearing. When the employer did not answer his phone, a message was left for the employer to contact the Appeals Section if he wanted to participate in the hearing. The employer did not respond to the message left by the administrative law judge. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes he claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in August 2012. He worked full time managing a Kentucky Fried Chicken restaurant.

In April 2013, the claimant's restaurant had a missing deposit. No one was discharged for this missing deposit. The employer asked the claimant to have his store's money counted three times a day and to have a witness present when cash was counted.

The evening of August 9, the claimant counted money at the end of the night. He noted the cash he counted on a money ticket and locked the money in a safe. The claimant did not have anyone observe him counting the money on August 9 because he had to keep labor costs down and he knew employees had to attend a meeting the next day. Even though the employer wanted another employee present when cash was counted, the employer knew this did not always happen. The employer did not discipline the claimant or other employees for failing to have another employee present when money was counted.

On August 10, another person opened the store and reported \$100.00 was missing. This employee did not have another employee present when he initially counted the money in the safe. The money ticket the claimant created the night before was not found and there were different denominations of money in the safe on August 10. The claimant immediately reported the missing money to his supervisor. The claimant understood that as the manager, he would be held responsible for the missing \$100.00.

On August 13 the employer discharged the claimant because he did not follow the employer's cash procedures in August after his store had a missing deposit in late April.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had justifiable business reasons for discharging the claimant. As the manager, the claimant was ultimately responsible for what happened at his store. The evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant used poor judgment when he did not have another employer present when he counted money the evening of August 9, but the employee who counted the money the next morning did not have anyone present when he initially counted the money either. The facts do not establish that the claimant committed work-connected misconduct. Therefore, as of August 11, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's September 20, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of August 11, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css