

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID ELLIS
Claimant

APPEAL NO. 07A-UI-04834-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

OC: 04/15/07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

David Ellis (claimant) appealed an unemployment insurance decision dated May 4, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Foods, Inc. (employer), doing business as Dahl's Food Store, for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa, on June 6, 2007. The claimant participated in the hearing. The employer participated through Greg Wagner, Store Manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

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 as a part-time cashier on August 23, 2004 and had most recently worked in a full-time capacity until he was discharged from employment on April 18, 2007. He had problems with attendance and had numerous no-call/no-shows during 2007. As a result of this, he was suspended for a week beginning March 30, 2007. His discharge was unrelated to his attendance, however, and resulted from one incident that occurred on April 17, 2007. The claimant had somewhat of an emotional breakdown or violent outburst. At approximately 9:00 p.m., he began screaming and hit the cash register with his fist. He was behaving erratically and appeared to be hiding behind items. The claimant eventually collapsed to the floor and sobbed uncontrollably. The manager on duty escorted him to a break room where he stayed until a family member arrived to take him home. He was discharged on the following day. This incident occurred shortly after a mass shooting had taken place at a school in Virginia and the employer had to take steps to provide a safe environment for its other employees and customers.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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 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 substantial and 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 claimant was discharged for having an emotional and violent outburst at work on April 17, 2007 which scared his co-workers and possibly customers. The employer made a reasonable business decision in discharging the claimant but his conduct was clearly not intentional. His actions undoubtedly scared and surprised even himself but acknowledged that he is seeking

mental health treatment. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated May 4, 2007, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css