

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLIN D KENNARD
Claimant

APPEAL NO. 11A-UI-00135-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA PIZZA COMPANY INC
Employer

**OC: 11/28/10
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 22, 2010 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 did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge finds the claimant 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 November 2007. He worked an average of 18 hours a week as a delivery driver. Before a new assistant manager started working in August or September 2010, the claimant had nothing to do with the store's computer. The claimant's job consisted of delivering pizzas.

The claimant has no experience using a computer and is not comfortable using computers. In September, the new assistant manager told the claimant that all employees at the store had to learn how to use the store's computer so everyone could take phone orders. The claimant did not learn how to use the employer's computer. When the assistant manager told the claimant he would show him how to use the computer, the claimant said he was too uncomfortable and could not do work on the computer.

On November 27, when the shift manager gave the claimant a written warning for insubordination for refusing to learn how to use the computer, the claimant was upset about the written warning and refused to sign the written warning. A short time later, the employer discharged the claimant and told him that if he could not use a computer, the employer did not have any work for him and he needed to go home. The claimant and shift manager then verbally insulted one another.

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 facts indicate the employer had business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally disregarded the employer's interests. The claimant was not hired to do any computer work. His refusal to learn how to work the computer when he felt very uncomfortable with computers or anything electronic and was hired to make pizza deliveries does not rise to the level of work-connected misconduct. Without the employer present to explain how the claimant committed work-connected misconduct, the evidence presented at the hearing does not establish that the employer discharged the claimant for work-connected misconduct. Therefore, as of November 28, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's December 22, 2010 determination (reference 01) is reversed. The employer discharged the claimant, but did not establish that he committed work-connected misconduct. As of November 28, 2010, 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/kjw