

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN A MONINSKI
Claimant

APPEAL NO: 09A-UI-09807-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 05 /31/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Flying J, Inc. (employer) appealed a representative's June 29, 2009 decision (reference 01) that concluded Kevin A. Moninski (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 23, 2009. The claimant participated in the hearing. Gary Crosser, the district manager, appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer in January 2005. Prior to his employment separation, the claimant worked full-time as the general manager at the employer's Davenport location. Crosser supervised the claimant.

During the course of the claimant's employment, he usually had problems meeting his hourly salary budget. He was the only manager that Crosser supervised who had this problem. During his employment, some months the claimant met the shrinkage goal and other months he exceeded the shrinkage goal. December 2008 and January 2009, was the first time the claimant had two consecutive months that he did not meet the employer's shrinkage goal. The December shrinkage was 5.8 percent and January was 5.7 percent. The employer's budget indicated the inventory budget allows 2 percent shrinkage, but the employer actually allows 5 percent shrinkage. The claimant has always had problems with his hourly labor costs.

On February 9, the employer gave the claimant a written warning and told him he had the first quarter of the new fiscal year to get his inventory shrinkage and labor costs under control. The claimant understood his job was in jeopardy if he did not make improvements. The claimant implemented procedures to retrain line cooks and audit the amount of food served to customers.

When the claimant mentioned problems with missing steaks, Crosser suggested putting locks on coolers and counting steaks. In March, the claimant took over the kitchen manager duties and discovered his former kitchen manager had cheated when doing inventory control. The claimant told Crosser he would be making adjustments to make sure the inventory was accurate, which meant his shrinkage for March would increase.

In March, the employer also implemented new menus. This meant cooks had to be trained on how to prepare the new menu items. The claimant understood he could give the new menu items to customers to sample for free because the employer wanted input about the new items. The claimant understood he did not need to worry about how much food he gave away.

On May 9 or 14, the Crosser learned the claimant had a shrinkage percent average of 7.1 percent for the first quarter of the new fiscal year. For February the shrinkage was 5.88 percent, March was 14.25 percent and April was 1.4 percent. In April the employer reduced all locations shrinkage by a certain amount based several factors. As a result of the claimant's failure to meet his financial goals, the employer discharged him on May 15, 2009.

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 established compelling business reasons for discharging the claimant when he did not meet the employer's financial goals the first quarter of the current fiscal year. Even though the claimant had been trained on how to meet the employer's goal, he did not. The facts do not, however, establish that the claimant intentionally failed to perform his job so he would not meet the employer's goals. The claimant had a number of situations that led to an unusually high shrinkage rate for March – the claimant took over the job duties of the kitchen manager, he discovered the previous kitchen manager had not done the inventory correctly, he had to make adjustments to correct the inventory that increased the shrinkage percentage and the employer introduced a new menu that customers were to sample by receiving free food. The claimant misunderstood Crosser's information about how much free food could be given to customers. The evidence indicates the claimant tried to the best of his ability to meet the employer's goals, but was unable to do so. The claimant did not commit work-connected misconduct. Therefore, as of May 31, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's June 29, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of May 31, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css