

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH B. SMITH
Claimant

APPEAL NO: 17A-UI-07120-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PILOT TRAVEL CENTERS LLC
Employer

OC: 06/11/17
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 7, 2017, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 31, 2017. The claimant participated in the hearing. Harold Debose, Regional Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general manager for Pilot Travel Centers from August 3, 2014 to June 2, 2017. He was discharged for poor work performance.

The claimant was promoted to the general manager position in August, 2016. During approximately the last four months of his employment (dates unknown), the claimant was placed on a 90 day performance improvement plan and then a 30 day performance improvement plan. The employer felt he was not performing satisfactorily in the areas of hiring and discipline. The claimant had the authority to hire hourly employees but was expected to contact human resources regarding the hiring of assistant managers. The store was short-staffed and the claimant had a tendency to take on extra work because the store was so busy rather than hire employees. Toward the end of his employment, the claimant did attempt to hire an assistant manager without going through human resources.

The other area of concern the employer had with the claimant was disciplining employees. The claimant was allowed to issue verbal and written warnings and copies of the written warnings went to the regional manager and human resources. The claimant contacted human resources about disciplinary problems on two occasions but estimated he had four to five additional disciplinary problems that he did not contact human resources about.

The claimant was supposed to contact the regional manager every Thursday when he was on the performance improvement plans so they could discuss how the claimant was doing but the claimant did not call.

The employer determined the claimant did not meet the expectations set forward in the performance improvement plans and notified the claimant June 2, 2017, his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *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 employer testified the claimant “struggled” since he was promoted to the general manager position but acknowledges the claimant’s efforts to perform the job to the employer’s expectations until he failed to meet the requirements set forth in the performance improvement plans. The employer was unable to cite specific dates or examples however. The claimant was working as many as 74 hours per week and was performing the job to the best of his ability. While the claimant did not meet the employer’s expectations and may have made some poor judgments on occasion, the administrative law judge cannot conclude there was any intentional job misconduct on the part of the claimant as is required under Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 7, 2017, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn