

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A PETERSEN
Claimant

APPEAL NO: 12A-UI-14770-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 09/23/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 6, 2012 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because she had been discharged for nondisqualifying reasons. A hearing was initially held on January 17, 2012. The claimant was not called for the first hearing because even though she timely responded to the hearing notice instructions, her phone number was not properly recorded. By the time the claimant called to participate in the hearing, the hearing had been closed and Shauna Schroeder, the human resource representative and employer's witness, had been excused. The hearing was reopened and rescheduled to February 8, 2013.

The claimant participated at the second hearing. Shauna Schroeder also participated. Based on the evidence, the arguments of the parties, 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 employer hired the claimant to work as a security guard at Menard's on October 12, 2012. In early November, Menard's personnel reported the claimant had been rude to customers and was not checking vehicles properly. The claimant's supervisor talked the claimant and told her she could not speed check vehicles. The claimant was not told someone complained that she had been rude to customers.

After her supervisor talked to the claimant, she did individual counts in vehicles when possible. The claimant enjoyed the job and got along well with customers. On November 14, Menard's personnel contacted the employer and told the employer to remove the claimant from Menard's immediately. The Menard's representative reported that the claimant again had been rude to a customer and was not properly checking vehicles. The employer ended the claimant's assignment on November 14, 2012.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 established justifiable business reasons for ending the claimant's assignment. After the client, Menard's, told the employer to end the claimant's assignment at their business, the employer had no choice but to terminate the claimant. The allegation the claimant and did not properly check vehicles was not established. The evidence does not indicate that the claimant committed work-connected misconduct. Therefore, as of November 11, 2012, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's December 6, 2012 determination (reference 03) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css