

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVERETT K SALLAY
Claimant

APPEAL NO: 08A-UI-00308-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH EDUCATION WEST LLC
Employer

**OC: 12/09/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Everett K. Sallay (claimant) appealed a representative's January 2, 2008 decision (reference 01) that concluded he was not qualified receive unemployment insurance benefits, and the account of SDH Education West LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 24, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 on August 21, 2001. The claimant worked full time as a closing supervisor. In the claimant's job, he did a little bit of everything.

On November 26, 2007, the employer informed the claimant he was discharged. The employer did not give the claimant a reason for his discharge. Prior to November 26, 2007, the claimant had no understanding his job was in jeopardy.

As the claimant has gotten older, he is not able to do everything he had done when he first started this job. The claimant assumed the employer discharged him so a younger manager could be hired at lower wages.

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 section 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 may have had compelling business reasons for discharging the claimant. Since the employer did not participate in the hearing, it is not known why the employer discharged the claimant. The facts do not establish that the employer discharged the claimant for work-connected misconduct. Therefore, as of December 9, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's January 2, 2008 decision (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of December 9, 2007, the claimant is qualified to receive unemployment insurance 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/pjs