

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R BAYLES
Claimant

APPEAL NO: 13A-UI-04808-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

XPAC
Employer

OC: 09/09/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 11, 2013 determination (reference 04) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing. Jeremy Senn, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes that based on this employment separation, the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time packer on February 25, 2013. From February 25 through March 15, 2013, the claimant's supervisor concluded the claimant's work performance or productivity did not meet the employer's standard. The claimant's supervisor reported seeing the claimant watch other employees do work and did not take the initiative to do work that had to be done. She concluded the claimant did not put forth the effort to get to the line and work.

The claimant worked to the best of his ability and did whatever he could. Sometimes there was not enough work to keep him busy. Since the claimant did not meet the employer's productivity standard and he worked less than 30 days, the employer discharged the claimant on March 15, 2013.

The claimant reopened his claim for benefits during the week of March 17, 2013.

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).

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 business reasons for discharging the claimant. Since the claimant's supervisor did not participate in the hearing, the claimant's testimony that he worked to the best of his ability must be given more weight than the employer's conclusions based on hearsay information. Unsatisfactory job performance within the first 30 days of employment does not constitute work-connected misconduct. Based on this employment separation, the claimant is qualified to receive to receive as of March 17, 2013.

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 April 11, 2013 determination (reference 04) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. Based on the reasons for this employment separation, the claimant is not disqualified from receiving benefits. 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