

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY L ROUTH
Claimant

APPEAL NO. 11A-UI-03468-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN BAPTIST HOMES OF MIDWEST
Employer

**OC: 01/02/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 15, 2011 determination that disqualified her from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualify reasons. The claimant participated in the hearing with her witness, Michelle Wessell. Dave Russell, the program director, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 15, 2010. She worked an average of 30 hours a week as a consumer support staff member. The employer's policy informed the claimant that the employer does not allow employees to smoke in the employer's vehicles. On August 20, the employer received information the claimant smoked in the employer's van when a consumer was present. Russell talked the claimant and reminded her she could not smoke in the employer's van. The claimant did not smoke in the employer's van after Russell talked to her on August 20, 2010.

During her employment, the claimant learned a consumer liked the claimant on a personal level. After she told the consumer nothing could develop between the two of them because she treated him professionally, he could not look at her.

On November 11, 2010, the claimant received a written warning for picking up some consumers late and for failing to contact her supervisor or police when she hit another vehicle. This written warning informed the claimant that if these problems continued, her job was in jeopardy.

In late November 2010, the employer received a consumer complaint that the claimant smoked in the employer's van when the consumer was present. Another consumer initially did not want

to say anything against the claimant, but later also reported the claimant smoked in the employer's vehicle.

On November 29, the employer called the claimant and told her she was discharged based on consumer complaints she smoked in the employer's vehicle.

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).

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The claimant knew the employer did not allow employees to smoke in the employer's vehicle. The employer even gave the claimant a verbal warning for violating this policy on August 20, 2010. If the claimant smoked in the employer's vehicle after August 20, she committed work-connected misconduct.

The employer discharged her on November 29, 2010, for violating the employer's policy. The employer made the decision to discharge the claimant based on complaints from two consumers. These consumers did not testify at the hearing and the claimant did not know who would have made the complaint or even when she allegedly smoked after August 20, 2010. The claimant's testimony that she did not smoke in the employer's vehicle after August 20, 2010, is credible and must be given more weight than the employer's reliance on unsupported hearsay information from consumers who did not testify at the hearing.

The employer established business reasons for discharging the claimant, but the evidence does not establish that she committed a current act of work-connected misconduct. As of January 2, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 15, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of January 2, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's count is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw