

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERRELL S SMITH**

Claimant

**APPEAL NO. 07A-UI-10527-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LABOR READY MIDWEST INC**

Employer

**OC: 10/14/07 R: 03  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Labor Ready Midwest, Inc. (employer) appealed a representative's November 6, 2007 decision (reference 01) that concluded Terrell S. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 30, 2007. The claimant participated in the hearing. Angie Wheelock, an operations specialist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 employer hired the claimant to work as an employee. Initially, the claimant worked part-time, but after three weeks worked full-time. On September 23, the employer gave the claimant a \$1.00 an hour raise. The claimant understood the employer was satisfied with her work performance when the employer asked her to work full time and gave her a raise.

On October 5, 2007, the claimant talked to the district manager about issues the claimant had with her manager's inappropriate conduct with temporary workers. As a result of this conversation, the employer learned the claimant had not previously been advised about the employer's conflict of interest policy and asked her to sign it. The claimant understood this policy did not allow employees to have personal relationships or date clients or temporary workers who applied to do temporary work for the employer.

On October 8, L.R., the claimant's mother's best friend and one of the employer's temporary workers, asked Wheelock if the claimant had changed her phone number because she tried to call her over the weekend and the claimant did not answer. Based on this information, the employer concluded the claimant violated the employer's conflict of interest policy. The

employer asserted that in accordance with the policy, the claimant could not talk to clients or temporary workers during off duty hours even if the claimant knew the person or was a friend before the claimant started working for the employer.

When the employer hired the claimant, the employer informed the claimant that when she worked a weekend she could take the list of temporary workers home with her and contact them for work from her home. When the claimant did this, she left a message for the person to call her back on her cell phone so she could place them on a job. No one told the claimant this was not permissible. During her employment, the claimant made all the telemarketing calls the employer asked her to make and gave the employer a report as to the outcome of a particular call. No one talked to the claimant about the way she completed her telemarketing assignment or expressed dissatisfaction with her work..

On October 11, the employer informed the claimant she was discharged because of poor performance and inappropriate conduct.

### **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).

The employer may have had business reasons for discharging the claimant. The facts do not establish that she intentionally or substantially disregarded the employer's interests or standard of behavior the employer had a right to expect from her. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of October 14, 2007, 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 November 6, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment

insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css