

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KEVIN C HULTINE
2064 LIBERTYVILLE ROAD
FAIRFIELD IA 52556

ANGEL GIFTS INC
P O BOX 530
903 WEST BROADWAY
FAIRFIELD IA 52556

Appeal Number: 04A-UI-00246-BT
OC: 12/14/03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kevin Hultine (claimant) appealed an unemployment insurance decision dated January 8, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Angel Gifts, Inc. for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2004. The claimant participated in the hearing. The employer participated through Terri Fuller, Director of Operations; Linda Reid, Production Supervisor; and Pamela McRoy, Production Development Director. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production manager from September 29, 2003 through December 15, 2003 when he was discharged. The claimant was discharged for repeated unethical and dishonest behavior. At the time of hire, the employer spoke with the claimant about appropriate behavior as a manager. At the end of the same week, the employer received a report about the claimant "cursing and raising a scene" in front of some employees. The employer confronted the claimant about it and he denied it, but two weeks later, the employer witnessed the claimant getting angry and cursing. He received a verbal warning for the incident. On October 10, 2003, another employee received a written warning for his failure to report information to his direct supervisor. The claimant denied the employee had spoken with him but during the interview, the employee discussed his conversation that he had with the claimant. The claimant never spoke up during the meeting but admitted afterwards that the employee had spoken with him. The employer discovered pornography on the claimant's computer on October 28 and 29, 2003. The computer's history showed the pornographic sites the claimant visited.

Problems continued into the next month with the claimant spending the employer's expense money for his personal use. On November 3, 2003, the claimant was given \$200.00 to be used for expenses. He tried to claim further expense money on November 10, 2003 and the employer subsequently discovered the claimant had spent the expense money. The claimant falsely stated he was out of town until November 24, 2003 when he had actually returned on November 23, 2003. There were numerous discrepancies with the claimant's work hours when he reported working more hours than he had worked. The claimant applied for two credit cards using the employer's name even though he had no authorization to do so. The claimant was late for work on December 14, 2003 and reported different stories to different managers. And finally, on December 15, 2003, the claimant was discharged after the employer discovered he had misappropriated money from the employer's candy box. Employees were on their honor to put money in the box for candy they purchased. The claimant was assigned responsibility for keeping the money safe and he stated that he took it home but his kids took it. The claimant offered to pay the candy company but did not have the money. He was discharged that same day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The claimant was discharged for repeated unethical and dishonest behavior. The claimant provided a written response to the employer's summary, which does not actually deny the employer's allegations, it merely explains things. The claimant clearly admits misappropriating the candy money and spending the expense money for his personal use. The evidence demonstrates a pattern of unethical and dishonest behavior that cannot be justified. The claimant's behavior was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 8, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount provided he is otherwise eligible.

sdb/s