

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF L YOUNG
Claimant

APPEAL NO. 08A-UI-07986-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELMOND CARE CENTER
Employer

OC: 07/13/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 4, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 23, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Tracy Quinones participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer from June 12, 2007, to July 15, 2008. He received a warning for safety violations in transporting residents on March 27, 2008. He was transferred at his request to the dietary department on March 28, 2008. He worked as a dietary cook after his transfer.

On about July 12, 2008, the claimant was approached at the service window for a room tray for a resident. The room tray included soup which is served from a single serving can and heated in a microwave and requires about two minutes to heat up. He told the person to come back at 11:00 a.m. for the tray, which was the amount of time necessary to prepare the tray. He opened the can of soup and tossed the can about 3.5 feet to the trash can. He missed and the can clattered to the floor. Finally, beets were on the menu. The claimant prepared the beets as per the requirements but someone who tasted the beets stated that they tasted bad. The claimant did not prepare anything to replace the beets but instead believed that the other vegetables, potatoes, and meat items were enough for the meal. He had never faced this situation before and did not know how to handle it.

It was reported to management that the claimant (1) had delayed providing a room tray when requested making the resident wait for food, (2) had unsafely tossed a metal soup, and (3) had failed to adhere to the menu and provide proper portion sizes at the meal. As a result, the employer discharged the claimant on July 17, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. At most, the employer has shown negligence not amounting to disqualifying misconduct in culpability.

DECISION:

The unemployment insurance decision dated September 4, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css