

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ALEX C THIELEN**  
Claimant

**GREEN BUICK GMC INC**  
Employer

**APPEAL 15A-UI-09141-JCT**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 11/23/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 6, 2015, (reference 03) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 2, 2015. The claimant participated personally. The employer participated through Cary Curtis. Employer Exhibits One through Four were admitted into evidence.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a service advisor and was separated from employment on July 20, 2015, when he was discharged (Employer Exhibit One).

The employer has conduct and work rules that include reasons for disciplinary action as; “Insubordination, other disrespectful conduct, or conduct tending to bring disrepute on Green Buick GMC” (Employer Exhibit Three). The claimant acknowledged receipt and understanding of the employer’s policies and rules upon hire (Employer Exhibit Four).

The final incident triggering the claimant’s discharge, began between the claimant and his cousin, while the claimant was off duty, attending a baseball game. The claimant is a member of the social network, Facebook, and voluntarily identified himself by name and photo, as well as his employer being Green Buick GMC (Employer Exhibit Two). Facebook allows individuals to publicly post comments or conversations amongst its members, but also allows individuals to privately converse on the Facebook forum.

While at the baseball game, the claimant and his cousin exchanged a series of messages via Facebook on a non-public “wall”, in which the claimant used the words “faggot”, “n-----“, and “cuz I fucked a 15 year old at 17?” and “fuck you bitch” (Employer Exhibit Two) in talking to his cousin. The claimant did not refer to the employer or employees at any point in the exchange.

A friend of the claimant's cousin took a screenshot with a personal cell phone and then posted it on the employer's public Facebook page, where the public could see the claimant's language, his picture, name and affiliation with the employer (Employer Exhibit Two). The claimant was subsequently discharged for conduct that reflected poorly upon the employer's reputation.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

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).

Violation of a specific work rule, even off-duty, can constitute misconduct sufficient to disqualify a claimant from unemployment insurance benefits. See *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). But the employer must have a work rule that covers the off-duty conduct. In this case, the employer does not have a rule or policy that warns an employee that he may be discharged for conduct outside the workplace. The employer based this decision to discharge for off-duty conduct based on a third party posting information about the claimant on the employer's public Facebook page, and stating the claimant's conduct brought disrepute upon the employer. Even if the evidence was sufficient to demonstrate off-

duty misconduct, the employer has presented insufficient evidence to establish a work rule that would extend to the off-duty conduct. In other words, the evidence would not have demonstrated misconduct *in connection with the employment*. Under the circumstances, the claimant could not have reasonably anticipated that messages exchanged in his personal time, with a personal contact, without using a work resource, would result in his discharge.

The administrative law judge does not condone the offensive and vulgar language used by the claimant, regardless of when and to whom it was conveyed. Further, the employer in this matter certainly had business reasons in discharging the claimant, but work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

**DECISION:**

The August 6, 2015, (reference 03) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The benefits claimed and withheld shall be paid, provided he is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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