

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

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Appeal Number: 05A-UI-00123-SWT
OC: 12/05/04 R: 02
Claimant: Respondent (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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 23, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 21, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Zane Blessum, and a witness, Katie Musser. David Williams participated in the hearing on behalf of the employer with a witness, Mark Fitzpatrick. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked as a camera and video clerk for the employer from February 11, 2001 to November 27, 2004. He suffers from cerebral palsy, a condition that affects the claimant's mobility and stamina. Donna Thompson was the claimant's supervisor.

On July 19, 2004, Thompson had begun processing a roll of APS film. The claimant accidentally exposed the film. On July 21, a customer dropped off 21 rolls of film to be processed. The employer was advertising a \$3.99 special for processing 24-exposure rolls of film. The claimant quoted the \$3.99 special to the customer for her rolls because he failed to notice the customer had some 36-exposure film. He received warnings on July 28, for exposing the film and misquoting the price to the customer.

On November 10, 2004, a customer brought in negatives to have double prints made. The claimant failed to ask the customer if she wanted the prints done in the store or shipped out to be printed, which costs more. When the customer picked up the prints on or around November 27, she questioned the cost and was charged the price for in-store prints. On November 26, a customer used the digital kiosk while the claimant was staffing the photo counter. Somehow, the customer left without the claimant logging the order in with identifying information, which was the normal process. When the photos were printed, the claimant left the pictures on the counter with a note stating, "Do not throw away." Thompson discovered what the claimant had done on November 27 when the customer came in for the pictures and it took some time to find them.

When the claimant came into the store on November 27, 2004, the general merchandise manager, Mark Fitzpatrick, discharged him for his repeated errors in handling photos.

None of the incidents described above involved the claimant deliberately acting in disregard of the employer's interests, orders, or policies. The claimant performed his job to the best of his abilities, but not the employer's standards of accuracy and meticulousness.

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.

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 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No willful and substantial misconduct has been proven. For negligence to equal willful misconduct in culpability involves conduct evincing a high degree of disregard of harm to the employer's interests. No such conduct has been proven here.

DECISION:

The unemployment insurance decision dated December 23, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/b