

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J ARMSTRONG
Claimant

APPEAL NO: 14A-UI-07727-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDSCAPE SOLUTIONS OF IOWA INC
Employer

OC: 12/15/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 18, 2014 (reference 01) determination that held the claimant qualified to receive benefits because he had been discharged for nondisqualifying reasons. The claimant participated at the August 19 and September 9 hearings. Nate Andrews, the vice president, participated at the August 19 hearing, but was not available for the September 9 hearing. Patti Richey, an office employee, participated only at the September 9 hearing. During the September 9 hearing, Employer Exhibits One and Two were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant did not commit a current act of work-connected misconduct and is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons that amount to a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in August 2011. He worked full time as a crew leader. During his employment, the claimant worked long hours. The claimant and the owners did not always get along. During his employment, the claimant did not receive written warnings for attendance issues.

In late May 2014, the employer talked to the claimant about his inappropriate comments on a whiteboard (Employer Exhibit Two). The employer considered the May 31 comments on a whiteboard offensive and talked to the claimant about this incident. While the claimant had intended his comments as a joke, he acknowledged to the employer that the comments were inappropriate. He apologized to the employer during their May 31 meeting. After he talked to the employer on May 31, the claimant considered this incident resolved. There were no issues of a similar nature after May 31.

Richey understood that when employees notified the employer they were going to be late for work; the employer did not consider the employee late for work. On June 20 the employer completed disciplinary action forms on the claimant for June 16, 17, 18, 19, and 20. The employer noted on each day the time the claimant was late for work which ranged from 24 minutes to an hour and 23 minutes. The employer did not give any of these disciplinary forms to the claimant (Employer Exhibit One). The employer talked to him and told him reporting to work late was unacceptable especially since he was a lead worker. On June 25 the employer noted on a disciplinary form that the claimant had been one hour and 50 minutes late for work on June 23. The employer did not give this disciplinary form to the claimant.

The claimant was on vacation on June 26 and 27. The employer expected him back at work on June 30. On Sunday night, June 29, the claimant contacted the employer and asked if he could have Monday off from work because his girlfriend did not fly out until later on Monday. The employer told the claimant to do what he had to do. The claimant spent time with his girlfriend on Monday, June 30 and did not report to work this day. He reported to work on July 1. When the claimant reported to work on Tuesday, the employer discharged him. The claimant understood he was discharged because of his attitude about work.

The employer discharged the claimant because he was repeatedly late for work, especially since June 16, the May 31 incident, and for causing morale issues when he talked about his wages and complained that he could make more if he worked for another employer.

The claimant had respiratory issues in June. The claimant thought the employer knew and understood he did not feel well and with his respiratory issues it was difficult for him to get to work on time. Even though the claimant did not feel well, he went to work and did not take time off from work. The claimant did not understand that the employer became increasingly frustrated with him and concluded he was late for work because he did not want to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer discharged the claimant for several reasons. For unemployment insurance purposes, the termination of employment must be based on a current act. Past acts and warnings can be used to determine the magnitude of a current act of misconduct, but a discharge for misconduct cannot be based on such past act or acts. 871 IAC 24.32(8). Since the employer did not discharge the claimant until July 1, the May 31 whiteboard incident does not amount to a current act.

The evidence establishes the employer ultimately discharged the claimant because he reported to work late from June 16 through 23 and then did not report to work on June 30. The evidence does not establish if the employer knew the claimant did not feel well in June. The claimant's assertion that he called the employer each night to report he would be late the next day; June 16 through 23 is not credible. The claimant may have called some days and his testimony that he called about taking time off on June 30 is also credible. The evidence demonstrates that in June the employer became increasingly frustrated with the claimant. Since the employer did not document any verbal warnings and did not give the claimant any written warnings about his attendance, the claimant's testimony that he was not warned his job was in jeopardy if he did not report to work on time is not disputed. The employer's failure to put the claimant on notice that his job was in jeopardy by giving him a written warning for attendance issues supports the claimant's testimony that he had no understanding his job was in jeopardy. The claimant believed that even if he were late, he worked long hours and made up time when he reported to work late. By failing to put the claimant on notice that his job was in jeopardy, the evidence does not establish that the claimant intentionally disregarded the employer's interests. This is especially true in June when the claimant asserted he did not feel well, but still went to work.

While I understand the employer's frustration with the claimant and the employer established business reasons for discharging the claimant, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of June 29, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's July 18, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of June 29 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can