

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS J FOREMAN**  
Claimant

**APPEAL NO: 11A-EUCU-00833-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 01/30/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 8, 2011 determination (reference 06) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Pidor Lul, the claimant's supervisor, and Sue Gerstenberger, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of October 30, 2011.

**ISSUE:**

Did the employer discharge the claimant for reasons that constitute work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant in mid-June 2011 to work as a part-time car wash attendant. Even though the claimant signed a statement that he understood he had been hired to work part-time, the claimant wanted full-time employment. When the claimant started his job and was in training, he initially worked more hours than he did later. The employer's attendance policy informed the claimant that the employer would not tolerate excessive absenteeism.

During his employment, the employer documented the claimant had been absent twice and late for work twice. The claimant left work ten minutes early on June 17. The claimant left on June 17 without asking his supervisor if he could leave. The claimant did not work the one day he was scheduled to work the weekend of June 18. The claimant reported to work late on July 15 and 20. The claimant received a documented verbal warning on September 16 because he notified the employer on September 4 just 15 minutes before his shift started that he was unable to work as scheduled. The employer requires a two-hour notice when an employee is unable to work as scheduled.

The claimant requested a meeting with the employer's district manager in early September about not being scheduled full-time hours. After this meeting, the claimant felt the employer tried to find reasons to discharge him.

On September 23, the claimant received a written warning for reporting to work late on September 21. The claimant overslept and woke up after his scheduled start time. As soon as the claimant woke up, he called the employer on September 21 to report he would be late for work. The claimant reported to work 30 minutes late.

On October 14, the claimant called the employer to see if he could pickup up his paycheck. The claimant needed his paycheck to pay a relative to take care of his child while he worked. After the employer told him he could not pickup his paycheck until the next day, Saturday, the claimant told the employer he could not work that day because of child care issues.

The claimant owed his childcare provider, a relative, \$200. The \$200 included money he owed for childcare and to pay back his relative for money he had borrowed. Before the claimant's relative would take care of his child, he required the claimant to pay him \$200. The employer initially offered to give the claimant an advance. After the employer learned the claimant needed \$200, the employer did not give the claimant an advance. The employer told the claimant he was hurting himself more financially if he did not work as scheduled that day. The employer understood the claimant was working for someone else that night.

On October 18, the employer discharged the claimant. The employer discharged him after concluding the claimant refused to work for the employer because he had another job the evening of October 14. The employer also discharged the claimant because the employer had given him a documented verbal warning and a written warning in September for failing to work as scheduled or for excessive absenteeism.

#### **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).

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).

On October 14, the claimant was unable to work because he did not have anyone to take care of his child while he worked. The claimant used poor judgment when he borrowed money from

a relative who also took care of his child. The claimant owed his relative \$200, which had to be paid before the relative would take care of the claimant's child again. Even though the claimant asked for an advance on his paycheck, the employer declined to advance him \$200 the day before he could pick up his paycheck.

With the exception of the weekend of June 18, the employer did not report any other absences that had not been excused or were not considered when the employer made the decision to discharge the claimant. Before October 14, the claimant received a warning for failing to give the employer timely notice when he would be late for work. On October 14, the claimant gave the claimant the required notice that he was unable to work as scheduled that day.

The employer concluded the claimant refused to work for the employer because he had another job. Even if the claimant told Gertsenberger he would be working for someone else that night, the claimant testified he did not work for anyone else and the employer did not know if the claimant worked for anyone else the evening of October 14. The evidence indicates the claimant made a flippant remark that frustrated the employer. As a result of the claimant's remark about working for someone else even though he did not, the employer discharged him for on-going attendance issues and for refusing to work as scheduled on October 14.

Did the claimant commit work-connected misconduct? No. The employer acknowledged that the claimant would not have been discharged if he only had child care issues on October 14. Therefore, as of October 30, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 8, 2011 determination (reference 06) is affirmed. The employer established justifiable business reasons for discharging the claimant. The claimant did not commit work-connected misconduct. As of October 30, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. If the claimant establishes a new benefit year and the employer is one of his base period employers, the employer's account may be charged at that time.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw