

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROD B HAWS
Claimant

APPEAL NO. 13A-UI-10195-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIVE STAR QUALITY CARE INC
Employer

OC: 07/28/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 2, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 2, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Diana Hartman participated in the hearing on behalf of the employer with a witness, Donna Manning. Exhibits One and Two were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as an admissions coordinator from April 12, 2011, to July 31, 2013. He was placed on a performance improvement plan on March 20, 2013, that required him to develop and implement a marketing plan and set monthly goals for the number of residents in the facility.

The claimant developed and implemented a marketing plan that included several events to attempt increase the number of residents, but he fell short of the monthly goals. He was discharged for this on July 30, 2013. The claimant performed the job to the best of his ability and tried to meet the goals established.

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, 11 (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. No willful and substantial misconduct has been proven in this case. At most, unsatisfactory conduct has been shown, which does not rise to the level of disqualifying misconduct.

DECISION:

The unemployment insurance decision dated October 2, 2013, reference 02, is affirmed. 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