

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed full-time with the employer from September 3, 1985 through March 31, 2005. He was discharged for insubordination. On March 4, 2005, the claimant made inappropriate comments to a former employee about the company, in front of other employees and customers. The claimant was angry with the employer and stated he was looking forward to the company going out of business by the end of the year. He said that it would be appropriate since he was around in the beginning and now would be in the end. The claimant told this former employee to not buy one of the employer's products since it was "junk." The claimant also stated that he was looking forward to getting fired. In addition to his negative comments, the claimant had been very negative for quite a while and just did not appear to want to work. The employer had tried him in several different jobs but the claimant had difficulty doing each one. The general manager was out of town at the time the claimant made the disparaging comments on March 4, 2005. When the manager returned, he investigated the incident and obtained written statements. He then had to contact the human resources department, which is at a different location. When he finally got approval to discharge the claimant, the manager waited until the end of the month to do so in order to make the transition easier for the claimant. The employer paid the claimant a generous severance package that provided him with wages through the end of August 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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).

The claimant was discharged for insubordination with the final act occurring four weeks prior to his discharge. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). The general manager delayed the claimant's termination until the end of the month and the end of the pay period to make it easier on the claimant. The employer also provided the claimant with a generous severance package, which it was not required to do. The administrative law judge applauds the employer's actions but cannot disqualify the claimant because the discharge was not based on a current act. Benefits are allowed.

#### DECISION:

The unemployment insurance decision dated October 7, 2005, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/s