

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLAYTON E LAND
Claimant

APPEAL NO. 08A-UI-04386-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONE-DONE SERVICES LLC
Employer

**OC: 04/04/08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a- Discharge

STATEMENT OF THE CASE:

Clayton E. Land (claimant) appealed a representative's April 29, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Done-Done Services LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Cedar Rapids, Iowa, on July 16, 2008. The claimant participated in the hearing with his attorney, Matt Riley. Pat Freilinger, the president, appeared on the employer's behalf. Christie Land observed the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 25, 2007. The claimant worked as a full-time handyman/technician. Freilinger supervised the claimant. The claimant's job required him to go to a customer's home and evaluate a home maintenance situation or make a repair. If the claimant made an evaluation, Freilinger then sent the customer a bid for the proposed work.

On January 22, 2008, the claimant received a call to go to S.H.'s home for a squeaky floor. Initially, Freilinger assumed this job would take about 15 minutes to complete. After the claimant arrived at S.H.'s home, he concluded he could not make the repair that day because it was more involved than what had been anticipated. Since new flooring had recently been installed, he looked at several options to fix the squeaky floor without damaging the homeowner's new flooring. The claimant explained the options to S.H., a female.

The claimant was at S.H.'s home for over an hour. During this time, the two engaged in conversation. The conversation ranged from options on how to fix the squeaky floor to talking about the claimant's father and his health issues. During this conversation, the claimant told S.H. that once his father told the claimant's sister that he was proud that his national heritage

discovered Viagra. The claimant at no time felt S.H. was uncomfortable with him and she did not react in a negative way during any of their conversations.

The claimant told Freilinger about the options to fix the floor. Freilinger then sent S.H. and her husband a bill for the claimant's time and a proposed bill. When Freilinger talked to S.H.'s husband on January 30, he learned S.H. complained about the length of time the claimant had been at her home, that she felt uncomfortable in the claimant's presence and how unprofessional the claimant had been when he talked about the discovery of Viagra. Freilinger talked to S.H. after her husband complained about the claimant.

After talking to his attorney, Freilinger became aware of the potential liability that could occur if there were any further incidents of a similarity. The employer was also concerned about this incident because his business relies on referrals. Even though the claimant's job was not in jeopardy before the employer talked to S.H. and her husband, on January 31, the employer discharged the claimant because of his conduct at S.H.'s home on January 22, 2008.

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).

Based on the customer's complaint, the employer established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant intentionally conducted himself inappropriately at S.H.'s home. Even though the homeowner complained about the claimant being at her home too long, the problem the homeowner wanted fixed was not an easy fix. The employer acknowledged that he did not disagree with the claimant's conclusion on how to fix the homeowner's squeaky floor.

During the time the claimant was at S.H.'s home, he explained the options to fix the squeaky floor. The claimant thought he had developed a rapport with S.H. and felt comfortable talking about his father's medical problems. While relating a story about his father, the claimant told S.H. that his father was proud that his heritage had discovered Viagra. The evidence does not establish that the claimant made the comment to make S.H. uncomfortable. Since the claimant did not know S.H., the discussion about the Viagra discovery was not appropriate and the

claimant used poor judgment. This isolated incident does not rise to the level of work-connected misconduct. As of April 6, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's April 29, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 6, 2008, the claimant is qualified to receive benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css