

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH A LYONS
Claimant

APPEAL NO: 09A-UI-16558-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMF BOWLING CENTERS INC
Employer

**OC: 10/04/09
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's October 23, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on December 9, 2009. The claimant participated in the hearing. David Van Wyk, the district manager, appeared on the employer's behalf. 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 part time for the employer the summer of 2007. The employer promoted the claimant in January 2009 to working as the full-time manager.

When the claimant became the manager, the employer told him to take ownership of the business. The facility had not been kept up and needed repairs. In an attempt to get the bowling center up to standard, the claimant spent his own money to buy chairs, ceiling tile and stalls for the restrooms. When the claimant asked the employer for permission to buy items to repair the facility or to give employees bonuses, the claimant was told it was not in the budget and the employer did not give him authorization to spend the requested amount. After the claimant became the manager, he spent over \$500.00 of his personal money for improvements at the employer's facility.

When Van Wyk and the claimant initially walked through the facility, they saw some old bowling pins. Van Wyk told the claimant he did not care what the claimant did with the bowling pins, but he needed to get rid of the old bowling pins. In early September 2009 the claimant sold the bowling pins to another bowling center that did not compete with the employer. This business owner gave the claimant a check for \$500.00 for the bowling pins. The claimant cashed the check and put the money in his personal banking account. The claimant wanted to use the

money as a reimbursement for the improvements he had already made or to make more improvements at the facility. If the claimant had deposited the money in the employer's account, the employer would not have been allowed the claimant to use the money to make improvements.

During the week of September 20, Van Wyk learned the claimant had sold some the bowling pins and had not deposited the money he received for the bowling pins into the employer's account. On October 2, the employer talked to the claimant about the \$500.00 he received for the bowling pins. During the October 2 meeting, the claimant told the employer he put the \$500.00 into his personal banking account, but the money was to purchase goods for the employer's improvement projects.

On October 2, 2009, the employer discharged the claimant for depositing money from the sale of the employer's used bowling pins into his personal bank account. Although the claimant had receipts for the improvements he had already personally funded, the employer was not interested in listening to this information on October 2.

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).

The evidence shows the claimant tried to upgrade the bowling center he managed, but became frustrated when the employer denied his requests for money because it was not in the employer's budget. The claimant's priority, as the manager, was to make improvements. To accomplish this he used some of his personal money to make improvements. The old bowling pins could have been thrown away or donated instead of being sold. The claimant made the decision to put the \$500.00 he received for the bowling pins into his personal checking account so he had money to purchase items for projects at the facility. The claimant's decision to deposit the money into his bank account instead of the employer's bank account amounts to an error in judgment. Since the claimant had already used his personal money for improvements, the evidence indicates he would not have personally benefited from the \$500.00. Instead, he would have used the money for improvements as he told the employer. Based on the facts in this case, the claimant did not commit work-connected misconduct. Therefore, as of October 4, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's October 23, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed work-connected misconduct. As of October 4, 2009, 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