

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SPENCER B SAGE**

Claimant

**APPEAL NO. 12A-UI-12926-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RM ENTERPRISES INC**

Employer

**OC: 09/16/12**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 17, 2012, reference 02, that concluded the claimant was eligible to receive unemployment insurance benefits. A telephone hearing was held on November 29, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Rhonda Coborn participated in the hearing on behalf of the employer with a witness, Larry Zilge.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer on an assignment as an appliance delivery and installer helper at the client business, Zilge Appliance from March 7, 2012, to September 7, 2012.

When the claimant started working at Zilge Appliance, he informed the owner, Larry Zilge, that he did not have a driver's license. The claimant had a driving under the influence and driving while revoked convictions for which he had fines of about \$2,500.00 he had to pay off. He told Zilge that he could apply for his driver's license when he paid off the fines. Since the claimant was working on a 2-person delivery team and his other team member had a license, Zilge allowed the claimant to work for him. Later, Zilge made it clear to the claimant that in order to be hired on permanent with Zilge Appliance, he would need to have a driver's license. The claimant made the mandatory monthly payments on the fines, but was not able to pay off the fines in the six months he worked at Zilge Appliance. Zilge often mentioned to the claimant that he needed a license to be hired by Zilge Appliance. Neither he or anyone with Personnel Solutions warned him that he would be removed from the assignment if he did not get his driver's license by a certain time.

Zilge was also dissatisfied with the claimant not arriving at work promptly and leaving working after completing his delivery jobs. The employer had additional work in the shop to do, such as

sweeping the floor or cleaning up around the shop. The claimant understood these were tasks for employees who were looking for extra hours instead of being required job duties. The claimant did sometimes arrive five to ten minutes after the store opened, but this was common for other employees as well. Neither Zilge or anyone with Personnel Solutions disciplined him for tardiness or failing to do clean-up work.

After receiving complaints from employees at the end of August that the claimant was not helping out with clean-up work while Zilge was at an appliance convention, Zilge released the claimant from his assignment. He released him from the assignment for not getting his driver's license, not performing cleaning tasks, and tardiness.

### **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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. At most, the evidence establishes unsatisfactory work performance not rising to the level of work-connected misconduct. The claimant was hired by Personnel Solutions and assigned to work at Zilge Appliance. The claimant understood that he could not be hired by Zilge Appliance permanently without a driver's license. It was not a condition of employment with Personnel Solutions and Personnel Solutions and Zilge Appliance knew the claimant did not have a driver's license when he started working there. Zilge decided the claimant was not really interested in the job, but willful and substantial misconduct has not been proven in this case.

**DECISION:**

The unemployment insurance decision dated October 17, 2012, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css