

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SILBERIO PRECIADO**  
Claimant

**APPEAL NO. 07A-UI-04227-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ITOHAM AMERICA INC**  
Employer

**OC: 04/01/07 R: 01  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated April 19, 2007, reference 01, that concluded he was discharged for work-connected misconduct. . A telephone hearing was held on May 9, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Willis Hamilton, and the assistance of an interpreter, Susan Jaquez. Joli Gehring participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from April 24, 1995, to April 3, 2007. The claimant was informed and understood that under the employer's work rules, he could be disciplined for failing to follow restrictions placed on him by a doctor.

He injured his knee at work and underwent surgery for that condition in January 2007. The claimant received workers' compensation benefits for this injury. He returned to work. On March 19, 2007, the claimant went to his doctor for a follow-up examination. The doctor examined the claimant and prepared a work restriction sheet that recommended that he receive physical therapy for two weeks and imposed the following work restrictions on the claimant: "light-duty from March 20 to April 2," "okay for sedentary job now," and "okay to climb stairs to office." The doctor did not impose any other restrictions. The claimant's primary language is Spanish, and the work restriction sheet was in English. The doctor did not tell the claimant that he was only able to work while seated. He did not tell the claimant that he was stay home or stay off his feet until his next appointment on April 2. The doctor told the claimant that he should walk and perform exercises to improve his condition.

When the claimant submitted his work restriction statement to the employer, the employer informed him that the employer did not have work within the restrictions. As a result, the claimant was off work from March 20 to April 2. The claimant underwent regular physical

therapy while he was off work. The physical therapist also gave him exercises and told him to walk around to strengthen his knee.

The claimant owns a used car lot, which is managed by his son. During the time he was off work, he stopped at the car lot occasionally. He walked around the lot, spoke to customers, and did some light cleanup of some vehicles. He did not think that he was violating his work restrictions by performing these activities.

The employer had learned that the claimant owned a car lot and hired a company to conduct surveillance on the claimant. After reviewing the surveillance, the employer decided that the claimant was violating the doctor's work restrictions and discharged him on April 3, 2007, for that reason.

### **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.

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).

No willful and substantial misconduct has been proven in this case. While the doctor wrote in his statement "okay for sedentary job now," the statement was in English and the claimant was not told and did not understand that he was only to perform work while he was sitting down. In fact, the verbal instructions given by his doctor and physical therapist were for him to exercise his leg and walk around. The claimant did not willfully violate his doctor's work restrictions in do some light work at his car lot.

**DECISION:**

The unemployment insurance decision dated April 19, 2007, reference 01, is reversed. 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