

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JUSTIN P KEPLER**  
Claimant

**APPEAL NO: 10A-UI-06894-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 03/21/10**  
**Claimant: Respondent (1)**

Section 96.5-2-a- Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's April 29, 2010 decision (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for reasons that do not constitute a current act of work-connected misconduct. A telephone hearing was held on June 29, 2010. The claimant participated in the hearing. Shauna Webster, the human resource branch representative, 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 for the employer on June 1, 2006. He worked as a full-time security officer. The claimant most recently worked at Electrolux. Prior to February 24, 2010, his job was not in jeopardy.

On February 24, 2010, the claimant was stationed at the front desk at Electrolux. Another security company had security guards a few feet from the claimant's assigned location. The claimant was scheduled to work 2:00 to 10:00 p.m. Shortly before 3:00 p.m. the claimant told the other security guard he was going outside to pick up his lunch that had been brought for him. Instead, of picking up his lunch and going right back to the front desk, the claimant chatted in the car with a friend. The car was parked in Electrolux's parking lot.

Electrolux periodically reviews security video tape. On March 10, an Electrolux representative contacted the employer's regional manager and asked the claimant be removed from the Electrolux facility because he left his work site without permission for a period of time on February 24, 2010. The regional manager talked to the claimant on March 11 about Electrolux's report. The claimant acknowledged he left his workstation and sat in Electrolux's parking lot talking to a friend. The claimant had not intended to stay in the parking lot, but he and his friend

started talking and he lost track of the time. The claimant learned Electrolux would only allow him to work at their location until March 19, 2010. The regional manager told the claimant he would assign him to another location.

The employer did not have another full-time job to assign to the claimant even though the claimant was willing to move. As a result of the employer not having another full-time position, the claimant's employment ended on March 19, 2010.

#### **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).

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).

Even though the incident occurred on February 24, 2010, the employer did not learn about this until March 10, 2010. After learning about the February 24 incident, the employer took immediate action and informed the claimant his assignment at Electrolux would end on March 19, 2010. Based on these facts, the employer terminated the claimant based on a current act.

The facts also establish the claimant's job was not in jeopardy before the February 24, 2010 incident. Since the client no longer wanted the claimant as a security guard, the employer had to remove the claimant from this location. Since the employer tried to find another full-time assignment for the claimant, the facts suggest the employer did not consider the February 24, 2010 incident so egregious that the claimant needed to be discharged. The claimant used poor judgment when he stayed in the parking lot too long talking to a friend. This isolated incident does not, however, rise to the level of work-connected misconduct. As of March 21, 2010, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 29, 2010 decision (reference 03) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 21, 2010, the claimant is qualified to receive benefits, provided he meets all 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