

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH C SKEENS**  
Claimant

**APPEAL NO. 08A-UI-11117-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WIRING BY DESIGN INC**  
Employer

**OC: 09/28/08 R: 02**  
**Claimant: Appellant (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Joseph C. Skeens (claimant) appealed a representative's November 19, 2008 decision (reference 02) that concluded he was not qualified to receive benefits, and the account of Wiring By Design, Inc. (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 on December 16, 2008, in Des Moines, Iowa. The claimant participated in the hearing. John Bata, President, testified on the employer's behalf. Peggy Bata was also present and available to testify. 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 began working for the employer on September 18, 2008. The employer hired the claimant to work as a full-time salesperson. The employer paid the claimant a salary. John Bata supervised the claimant. At the time of hire, the employer knew the claimant had another job and worked for Sears. The employer, however, expected that the claimant's second job would not interfere with his work for the employer.

After the claimant worked about a month, the employer grew increasingly frustrated with the claimant. The employer was frustrated because the claimant left the office in the afternoon, but the employer did not know where the claimant was or what he was doing. Initially, the employer assumed the claimant was making cold calls in an attempt to make sales. The claimant, however, did not make any sales on his own during his employment. The projects the claimant worked on were ones Bata gave him to do. While the employer wanted to know what cold calls the claimant made, the employer did not ask for a list of businesses the claimant contacted.

On October 15, Bata became upset with the claimant after the claimant left work to take his daughter to an orthodontist appointment instead of taking techs to a job. On the way to another

job, Bata told the claimant he was very upset with him for leaving a job that morning. Before giving a quote to a company that day, the claimant asked Bata how much he should quote. Bata told him \$750.00. At the meeting the claimant gave the customer \$950.00 quote. The customer did not accept the employer's bid.

When Bata and another employee tried to train the claimant to use the employer's computer data system, he walked out when he received a call. The employer concluded the majority of these calls were from his wife, which also frustrated the employer. The employer concluded the claimant received too many personal phone calls at work and did nothing to limit them.

On October 22, the employer contacted the claimant around 9:00 a.m. because the claimant had not shown up for work and the employer did not know where he was. The claimant explained that he had a meeting that involved his other employer at 9:00 a.m. and would be at work late. When the claimant reported to work around 11:00 a.m., the employer discharged the claimant. The employer discharged him because of unsatisfactory job performance – he did not make any or enough sales while he worked for the employer; the claimant let his second job interfere with his work for the employer, the claimant received and accepted too many personal phone calls and the claimant did not make the employer's work his priority which was evidenced by his absences from work for personal reasons.

#### **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).

The employer ultimately discharged the claimant for compelling business reasons. The claimant was not the hardworking salesperson he portrayed himself to be when the employer hired him. As a result, the claimant did not make the sales the employer expected from him. The claimant frustrated the employer when he did not curtail his personal calls or consider his job commitments to have priority over family obligations.

While the employer talked to the claimant about certain frustrations, the claimant had no clue that his continued employment was in jeopardy. Even though the employer talked to claimant about problems or issues the employer had with him, the employer did not give the claimant a written warning indicating his job was in jeopardy if he did not correct certain issues by a certain date.

For unemployment insurance purposes, the claimant was not a good employee. However, the facts do not establish the claimant intentionally failed to follow the employer's instruction or that he intentionally disregarded the employer's interest. A claimant must be put on notice his job was in jeopardy. The employer incorrectly assumed the claimant understood he needed to address certain problems. The claimant did not comprehend or understand the employer's warnings. As a result, the claimant did not commit work-connected misconduct. Therefore, as of October 19, 2008, the claimant is not disqualified from receiving benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

The claimant established a claim for benefits during the week of September 28, 2008, when he was working as a full-time employee. The record indicates he filed claims for weeks he worked full time and reported some wages. Since the claimant worked for Sears and for the employer full time September 18 through October 22, the issues of whether the claimant is unemployed and has correctly reported all the wages he earned from both employers during these weeks is remanded to the Claims Section to investigate and make a determination.

**DECISION:**

The representative's November 19, 2008 decision (reference 02) is reversed. The employer discharged the claimant for compelling business reasons. These reasons do not, however, constitute work-connected misconduct. As of October 19, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged. Issues of whether the claimant is unemployed and whether he accurately reported wages from both Sears and the other employer from September 28 through October 22 are remanded to the Claims Section to investigate and make a determination.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css