

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY E BUNDE
Claimant

APPEAL NO. 08A-UI-01776-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT CONNECTIONS INC
Employer

**OC: 01/27/08 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 15, 2008, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 6, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Darcy Johnson. Jim Kitterman participated in the hearing on behalf of the employer with a witness, Joy Sheley.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment working as a machinist at Eaton Corporation from November 20, 2006, to January 28, 2008.

The employer discharged the claimant on January 28, 2008, because the claimant had walked into a safety restricted area on January 24, had left work before the end of shift without speaking directly to a supervisor, and had reported to work several hours before the start of his shift on January 26 without permission.

On January 24, an employee was operating a piece of equipment with a boom. None of the required signage to mark the area as a safety zone was done. The claimant stepped into the area and immediately backed out when he saw the boom overhead.

A short time later the claimant became ill and vomited. He decided that he was not able to work. He tried finding a supervisor but his supervisor was involved in a meeting. He told another employee to let the supervisor know that he had left work sick. The employee conveyed the information to the supervisor. The supervisor acknowledged that he was in a meeting and said things were fine.

The claimant's supervisor had informed the claimant on January 24 that the employer needed him to report to work on Saturday, January 26, and Sunday, January 28, because Eaton Corporation had gotten behind on production of some parts they needed to ship out. The claimant asked the supervisor if they needed him to come in early, and the supervisor responded that he should come in early. Normally on Saturdays when employees worked, they would come in at 5:20 a.m. The claimant had come into work as early as 1:20 a.m. several times before on a weekend shift. He had never been warned about coming in too early.

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.

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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 15, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css