

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SARAH E DUNNING
2109 W 1ST ST
SIOUX CITY IA 51103

PECH OPTICAL CORP
PO BOX 2820
SIOUX CITY IA 51106

RICHARD STURGEON
PO BOX 3372
SIOUX CITY IA 51102

DANIEL HARTNETT
ATTORNEY AT LAW
PO BOX 27
SIOUX CITY IA 51102

Appeal Number: 05A-UI-11966-SW
OC: 10/30/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 18, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on January 31, 2006, in Sioux City, Iowa. The hearing was consolidated with the hearing in Appeal 05A-UI-11965-SW, with the consent of the parties. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Richard Sturgeon, and the co-claimant, Ulysses Wade Tank. Daniel Hartness, attorney at law, participated in the hearing on behalf of the employer with witnesses, April Krieger, Kathy Turner, and Gary Peterson. Exhibits One and A were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer in the optical finish department from July 25, 2001 to November 2, 2005. April Krieger, the finish department manager, was the claimant's immediate supervisor.

The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and would be given a written warning if they were absent without proper notice to the employer. After three written warnings in a year, employees were subject to termination. Employees also receive points for absences and are subject to discharge at eight points after receiving progressive discipline. One-half point is assessed for an absence of four hours or less. The employer's work rules also provide for discipline up to dismissal for disruptive employees, who are defined as employees who interfere with the performance of another employee's job, employees with a continual negative attitude, employees who complain without getting the facts, and employees repeating idle gossip.

The claimant had not received any discipline or attendance warnings and only had been absent once in the over four years she worked for the employer.

On November 1, 2005, the claimant had come over by Wade Tank's work area delivering ice for optical production purposes. Kreiger assumed the claimant was out of her work area visiting with other employees, which was untrue. She raised her voice and yelled at the claimant to get back to work. This upset the claimant who believed Kreiger had treated her harshly and unfairly without getting all the facts about what she was doing.

The claimant and Tank regularly ate lunch together. While they were at lunch they discussed what had happened that morning. The claimant was still upset and did not want to return to work. Both the claimant and Tank decided not to return to work or call in that afternoon. They reasonably believed that they would get a warning and a half point for missing work that afternoon and would get a chance to explain what happened when they reported to work the next day.

The claimant reported to work as scheduled the next day. She was confronted by the human resource director about her actions and explained that she had things to do the previous afternoon and would take the attendance point. She was discharged for disruptive conduct and abandoning her job.

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).

While in general, the determination of work-connected misconduct is separate from deciding whether the employer has followed its discipline policy in discharging a claimant, the work rules provide a framework for deciding whether the misconduct is substantial in nature. In this case, under the work rules, if the claimant had finished her work shift on November 1 and then simply been absent from work without any notice on November 2, the human resources director confirmed that she would have received a written warning under the employer's policy despite the fact that she would have missed the entire day. The evidence fails to establish that the claimant missing work for one-half her shift without notice was substantially more disruptive. In light of the claimant's prior work history, this was an isolated instance of poor judgment that does not rise to the level of work-connected misconduct.

DECISION:

The unemployment insurance decision dated November 18, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf