

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON C BEACH
Claimant

APPEAL NO. 07A-UI-06454-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEERY BROTHERS INC
Employer

**OC: 06/03/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Deery Brothers, Inc. (employer) appealed a representative's June 19, 2007 decision (reference 01) that concluded Brandon C. Beach (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 17, 2007. The claimant participated in the hearing. Rachel Thompson, a representative with TALX, appeared on the employer's behalf, with Ron Bennett, the operations manager, testifying 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 April 5, 2005, as a full-time line technician. The claimant worked 7:30 a.m. to 5:00 p.m., Monday through Friday and was sometimes scheduled to work on Saturday. Prior to June 4, 2007, the claimant's job was not in jeopardy.

The claimant was ordered by a judge to attend some classes as the result of an OWI charge. The claimant learned the court-ordered classes were held on Tuesdays, 9:00 a.m. to 11:30 a.m. While some classes were held on Saturday, the claimant was unable to schedule the class he had to take on Saturday. If the claimant could have gone to a Saturday class, he would have.

On June 4, the claimant asked the employer if he could use his four vacation days for four consecutive Tuesdays in June to attend the court-ordered classes. The claimant was even willing to work half days on Tuesdays. The employer mistakenly believed the claimant could have taken the court-ordered class on Saturdays and denied his request for time off on any Tuesday. The employer has given other employees time off to attend court-ordered classes.

Even though the employer was short-handed, the employer discharged the claimant for having a conflict with court-ordered classes and work.

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).

The facts indicate the employer had previously granted the claimant time off for court appearances and other legal matters. While the employer had a right to deny the claimant's use of vacation days for four consecutive Tuesdays in June, the employer had previously allowed other employees time off to take such classes. The employer did not afford the claimant the same opportunity to attend the court-ordered classes that other employees experienced. Since the claimant could not attend a Saturday class, he made a reasonable offer to use vacation days or work part of the day on four Tuesdays in June. The employer incorrectly concluded the claimant could have taken the court-ordered class on Saturday, but would not. For this reason, the employer discharged the claimant. Since the employer relied on information from a secretary and a web page, the claimant's testimony that he could not take the class on Saturdays must be given more weight than the employer's reliance on hearsay information. In this case, the employer discharged the claimant for business reasons that do not amount to work-connected misconduct.

DECISION:

The representative's June 19, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 3, 2007, the claimant is qualified to receive unemployment insurance

benefits, provided he meets all other 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