

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L POLSON
Claimant

APPEAL NO: 10A-EUCU-00544-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOYMENT CONNECTIONS INC
Employer

OC: 09/27/09
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's June 22, 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 nondisqualifying reasons. A telephone hearing was held on August 12, 2010. The claimant participated in the hearing. Jim Ketterman, Tammy Christenson, Nate Lawson and Robert Seggerman appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. 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 registered to work for the employer on April 5, 2010. The employer assigned the claimant to work at Mauer on April 20, 2010. This was a long-term assignment. Before the claimant began working, the employer informed the claimant his hours were 6 a.m. to 4:30 p.m. unless a Mauer supervisor told him to work different hours.

When the claimant went to work at Mauer, Lawson supervised him. Lawson gave the claimant permission to operate a skid loader. When the claimant started working, Mauer did not have any training for new employees to take before they operated a skid loader. The claimant had operated a skid loader at previous jobs.

On May 20, 2010, the claimant worked past 4:30 p.m. The claimant was moving wagon boxes and did not realize what time it was. He does not wear a watch. No one, including Lawson, told him it was time to leave. The claimant stopped working when he noticed other employees going home. When the claimant moved wagon boxes, he scratched some paint on two of the boxes. The employer indicated the scratched paint was not unusual and would be touched up by the painters. (Employer Exhibit One, pg 1.)

On May 21, the claimant was moving pallets from the hoist area and putting them behind a building. The claimant started this without anyone telling him to do this. When the claimant told Lawson what he was doing, Lawson did not tell him to stop or that he should not do this. As a result of moving the pallets, the claimant worked later than he needed to. (Employer Exhibit One, pg 2.)

On May 25, the claimant did not punch in until 6 a.m., but started working before 6 a.m. Before 6 a.m., the claimant moved wagons with a skid loader to the side of the paint building. Two wagon boxes had to be repainted after he accidentally pushed them into the side wall of the paint building. The claimant hit a vent pipe on the building and it came off. When Lawson got to work around 6:05 am, painters complained about the damage the claimant had done before Lawson arrived. Based on the number of wagons the claimant had moved, Lawson concluded he started working around 5:30 a.m. (Employer Exhibit One, pg 3.)

When Lawson talked to the claimant on May 25, the claimant knew he was upset about the damage the claimant had done to the building. The claimant acknowledged he started before 6 a.m., but thought it was closer to 5:55 a.m. that he started working.

Lawson reported the May 20, 21 and 25 incidents to Mauer's human resource manager. On May 26, Mauer asked the employer to remove the claimant from the job assignment because the claimant did work without authorization and he worked before and after the hours he was scheduled to work. The employer ended the claimant's job assignment at Mauer's on May 26, 2010.

The claimant reopened his claim during the week of May 23, 2010. He filed for and received benefits for the weeks ending May 29 through June 12, 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 section 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 primary reason the claimant's job assignment ended at Mauer's was because he started working before 6 a.m. on May 25 and damaged the paint building while moving the wagon boxes before the start of his shift. Before the claimant started working at Mauer's, the employer told him his shift was 6 a.m. to 4:30 p.m. unless his Mauer supervisor

directed him to work other hours. Whether the claimant started moving wagon boxes at 5:30 to 5:55 a.m., is not important because he admitted he started working before 6 a.m. Since the claimant did not punch in until 6 a.m. he knew and understood his shift started at 6 a.m. No one at Mauer's asked the claimant to do any work before 6 a.m. on May 25 and no one asked him to move the wagon boxes that day.

The claimant's decision to start work early on May 25, off the clock, amounts to an intentional and substantial disregard of the standard of behavior the employer and Mauer's had a right to expect from him. The claimant's actions on May 25 constitute work-connected misconduct. Therefore, as of May 23, 2010, the claimant is not qualified to receive benefits.

An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment for benefits he received for the weeks ending May 29 through June 12, 2010, will be remanded to the Claims Section to determine.

DECISION:

The representative's June 22, 2010 decision (reference 03) is reversed. The employer discharged the claimant for work-connected misconduct he committed on May 25, 2010. The claimant is disqualified from receiving unemployment insurance benefits as of May 23, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. An issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs