

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

JAMES E ABBOTT
2333 BARKER ST
CLINTON IA 52732

O'REILLY AUTOMOTIVE INC
O'REILLY AUTO PARTS
233 S PATTERSON
PO BOX 1156
SPRINGFIELD MO 65802-1150

Appeal Number: 04A-UI-03729-DWT
OC 02/29/04 R 04
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 are 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:

O'Reilly Automotive, Inc. (employer) appealed a representative's March 23, 2004 decision (reference 01) that concluded James E. Abbott (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 April 19, 2004. The claimant participated in the hearing. Derek McClimon, the store manager, appeared 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 July 18, 2001. He worked as a full-time delivery parts specialist. McClimon was the claimant's supervisor.

During the claimant's employment, he received a written warning on October 9, 2003 for being rude to a customer. Even though the claimant received this written warning, his job was not in jeopardy prior to February 20, 2004.

On February 20, the claimant delivered four sparks to a cash-on-delivery business. When the claimant delivered the spark plugs, the business owner noticed the employer had billed out only one spark plug instead of four. When the business owner asked the claimant to change the bill or bring it to the employer's attention, the claimant indicated he was just a delivery person and had nothing to do with billing. The claimant accepted payment for one spark plug and left to make another delivery. When the claimant returned to the employer's facility he forgot to say anything to McClimon about the billing error.

McClimon's roommate was present when the claimant delivered the spark plugs because he worked for this business. McClimon's roommate told him about the spark plug billing error and that he and the business owner considered the claimant rude when he delivered the spark plugs. McClimon reported this complaint to his district manager.

On March 1, 2004, the employer discharged the claimant for having a bad attitude toward customers and being rude to customers.

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).

Based on a customer complaint in late February, the employer may have had compelling business reasons for discharging the claimant. Since the claimant did not have any authority to change or correct a bill, he did not intend to offend a customer when he indicated he did not have anything to do with billing. The claimant may have used poor judgment when he failed to

suggest that the customer call McClimon and then forgot to tell McClimon about the billing error. The evidence does not establish that the claimant was intentionally rude toward a customer on February 20, 2004. Even though the claimant had been warned about treating customers courteously in October 2003, his job was not in jeopardy prior to February 20, 2004. A preponderance of the evidence does not establish that the claimant committed work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 23, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 29, 2004, 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.

dlw/kjf