

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEMED REDZIC
Claimant

APPEAL NO. 07A-UI-00101-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 07/02/06 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 18, 2006, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on January 23, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of interpreter, Zijo Sucasca, and represented by attorney, Eric Loney. Greg Goss participated in the hearing on behalf of the employer with witnesses, Ken Johnson, and Barb Wright. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from April 12, 2002, to November 29, 2006. The claimant originally worked in the assembly and packaging unit but starting in October 2006 was given light-duty work as a result of a work-related injury that was diagnosed as a right shoulder cuff injury.

The claimant was treated by his family doctor, Dr. Strickland, and then in November by an orthopedic specialist, Leonard Lomax. On November 7, 2006, Lomax had restricted the claimant from lifting over 25 pounds over chest level or repetitive overhead reaching or lifting. The employer endeavored to provide light-duty work meeting those restrictions. One job the claimant had was sorting screws in boxes and another job that he could perform one-handed that involved bracing.

On November 28, 2006, the claimant was performed the screw-sorting job, when he was called into a meeting with management. During the meeting, the claimant was shown the doctor's restrictions given by Dr. Lomax on November 7, 2006. He was told that he was going to be assigned a job that met the restrictions that involved assembling cardboard boxes. The claimant was told that he could take his time and did not need to worry about productivity. His supervisor demonstrated to him how he could do the job one-handed. The claimant did the

box-assembly job for the remainder of his shift but found it impossible to do without using his right hand to some degree. He complained to his supervisor about experiencing pain in his shoulder after doing the job. The safety director called the office of one of the claimant's doctors and asked whether the box job met the claimant's restrictions. A nurse told the safety director that she had talked to the doctor and he had said the box job was within the claimant's restrictions.

The following day, the claimant reported to work before his supervisor's shift began and instead of assembling boxes, started sorting screws. When the supervisor saw the claimant sorting screws, he ordered the claimant to assemble boxes. The claimant insisted that he could not perform the job completely one-handed. His supervisor sent him home and told him that he would need to get another doctor's statement because he could do the box job under his restrictions.

When the claimant left, the supervisor told the human resources director what had happened and they decided the claimant would be terminated for refusing work. The claimant went to his family doctor and the doctor prepared a doctor's slip that changed his work restrictions to indicate that the claimant could not use his right shoulder at all at work. The claimant bought in the doctor's slip but the human resources director told him that there was no need to discuss the doctor's slip because he was terminated for refusing to do the assigned job of building boxes that morning.

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 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. While the claimant was instructed to do the job assembling boxes one-handed, it seems reasonable that the claimant after doing the job over an extended period of time would find it difficult to make boxes completely one-handed. His right shoulder was clearly injured and the fact that his doctor provided greater restrictions in his November 29, 2006 slip, suggests the claimant was not simply malingering or being insubordinate.

DECISION:

The unemployment insurance decision dated December 18, 2006, reference 02, is affirmed. 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