

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL J BELL
Claimant

APPEAL NO: 08A-UI-01719-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 01/13/08 R: 12
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's February 7, 2008, decision (reference 02) that concluded Daniel J. Bell (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 March 5, 2008. The claimant participated in the hearing. Dave Bergeon, Kirk Corey and Pat Ankrum 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 in August 2005. The claimant worked as a part-time assistant manager. Prior to July 18, 2007, the claimant expressed frustration with his job. Ankrum started noticing problems with his work performance.

The evening of July 17, 2007 and early morning of July 18, the claimant became intoxicated. While intoxicated, he sent Ankrum an email from his cell phone indicating he would not be at work on Wednesday or Thursday. The claimant also expressed frustration with the employer (not Ankrum) with the use of some profanity. Ankrum did not see the claimant's early a.m. July 18 messages until July 19.

On July 18, when the claimant did not report to work as scheduled, Ankrum called him. Mid-morning on July 18, the claimant called and told Ankrum he had just been released from jail. The claimant had been arrested for riding a bike while intoxicated. The claimant did not report to work on July 18 because he did not feel well.

After reading the claimant's July 18 messages, the messages confirmed Ankrum's conclusion that the claimant was frustrated with his job and really did not care if he worked any more. The employer discharged the claimant on July 19, 2007. In a letter, the employer informed the claimant he had been discharged because he made the comment that he no longer cared.

On July 18, the claimant came to the conclusion that he needed to look for another job, but he had not resigned or even indicated he was resigning when the employer discharged him.

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 facts establish the employer initiated the claimant's employment separation on July 19, 2007.

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 employer established business reasons for discharging the claimant. Ankrum even had the claimant's best interests in mind when she made the decision to end his employment. The fact the claimant used profanity the morning of July 18 when he was intoxicated establishes the claimant used poor judgment, but this does not rise to the level of work-connected misconduct. Even though the claimant did not report to work as scheduled on July 18, this isolated incident does not constitute work-connected misconduct. Based on the facts in this, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 7, 2008 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected

misconduct. As of January 13, 2008, 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/pjs