

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADAM L WOGOMON
Claimant

APPEAL NO. 12A-UI-09347-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC
Employer

OC: 07/08/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's July 31, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2011. He worked as a full-time night dock worker.

After the claimant finished working, early morning of July 7, he returned to the workplace about 30 minutes later to pay a truck driver for a pack of cigarettes he had gotten from the truck driver. When the claimant went back to work, he also relieved himself outside. While urinating, the claimant put his cell phone on a propane tank and forgot to pick it up when he left.

The morning of July 7, claimant went to the workplace a second time to pick up his cellphone. The claimant used a back way to get to the propane tank on the employer's property. The claimant picked up his cell phone and then left.

The employer received information that the claimant was at the employer's after his shift ended the morning of July 7 and that he appeared suspicious. The employer discharged the claimant on July 9 for removing the employer's property the morning of July 7. Initially, the employer told the claimant he had taken something in a black bag, then a white bag, then a black box and then a brown box. The claimant's cell phone is black. After the employer discharged the claimant for theft, the claimant contacted the local law enforcement officials to find out what the

employer asserted he stole. The law enforcement officials indicated they do not have a file on this alleged theft.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. The claimant may have used poor judgment when he used a back way to retrieve his cell phone. The employer did not establish that he stole anything or that the claimant committed work-connected misconduct the morning of July 7, 2012. Therefore, the claimant is qualified to receive benefits as of July 8, 2012.

DECISION:

The representative's July 31, 2012 determination (reference 02) is reversed. The employer discharged the claimant, but did not establish that the claimant committed work-connected misconduct. As of July 8, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs