

**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**

**MARSHAL C NICKLESON
205 PARK COURT SE
CEDAR RAPIDS IA 52403**

**CEI EQUIPMENT COMPANY INC
PO BOX 8090
CEDAR RAPIDS IA 52408**

**Appeal Number: 04A-UI-08638-DWT
OC: 07/18/04 R: 03
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 - Discharge

STATEMENT OF THE CASE:

CEI Equipment Company, Inc. (employer) appealed a representative's August 6, 2004 decision (reference 02) that concluded Marshal C. Nickleson (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 August 31, 2004. The claimant participated in the hearing. Karen Gaddis and Pat Novak 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 most recently worked for the employer from August 2000 through July 16, 2004. The claimant worked as a full-time engineering draftsman. Since May 4, 2004, Novak was his supervisor.

During the course of his employment, the claimant had medical problems. The employer knew about the claimant's medical issues. The claimant was on a leave of absence for a period of time so he could get the necessary treatment. Even after his treatment, the claimant had reoccurring medical problems, which at times affected his work.

On September 23, 2003, the claimant received a warning for sleeping at his desk. The claimant believed his prescription medication caused him to be tired. The claimant worked with his doctor to resolve this problem. The claimant's supervisor told the claimant his job was in jeopardy, which created further medical problems for the claimant.

On April 28, 2004, M.H., a supervisor, gave the claimant a final written warning for nearly falling asleep at work, failing to complete projects and for calling in late when he was unable to work as scheduled. The claimant told the employer that he was undergoing personal problems, which affected his work. The claimant understood his job was in jeopardy. M.H. also told the claimant he could not keep downloaded files from the server on his hard drive and told the claimant to delete files.

After Novak became the claimant's supervisor, he did not notice the claimant falling asleep at his desk or that he called late when he was unable to work as scheduled. Novak, however, frequently talked to the claimant about his projects. Although Novak made marks on the claimant's drawings, the claimant accepted Novak's comments because he was a new supervisor and the claimant needed to learn to complete projects the way Novak wanted them done.

After the claimant received the April 28 warning, the employer did not give him any further written warnings. The claimant did his job to the best of his ability. The employer, however, did not believe the claimant's quality of work was satisfactory. The employer concluded the claimant made too many mistakes. The employer also concluded that the claimant was too inattentive to details. Although the claimant's on-going medical problems may have contributed to the claimant's apparent inattentiveness, the employer did not ask the claimant for a statement verifying the claimant was capable of performing the employer's work or that the prescription medication he took created any problems for the claimant to do his job satisfactorily.

Based on continuing unsatisfactory work product due to mistakes and inattentiveness, the employer decided to discharge the claimant. The employer discharged the claimant on July 16, 2004.

When the employer prepared the claimant's computer for a new employee, the employer found around over 2,000 files the claimant had downloaded from the employer's server onto his hard drive.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. While the employer made the decision to discharge the claimant for an accumulation of mistakes and poor quality of work during the last year, the facts do not establish a current act in which the claimant intentionally and substantially disregarded the employer's interests.

The employer did not know the claimant had over 2,000 files downloaded on his hard drive when the employer decided to discharge the claimant. This fact was not discovered until after the claimant had been discharged and was not a reason for the discharge. Even if the employer had known about all the files on the claimant's hard drive, the problem was not that the claimant could not download files. Instead, the employer did not believe the claimant returned files to the server in a timely manner. The facts do not support this assertion. The evidence even shows the employer had not experienced any known problems with any of the files the claimant downloaded to his computer hard drive.

The law specifically states that unsatisfactory performance does not constitute work-connected misconduct. The evidence does not establish that the claimant intentionally failed to perform his assigned work satisfactorily or that there was any current act, which ultimately led to the employer's decision to discharge the claimant. Therefore, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 6, 2004 decision (reference 02) is affirmed. The employer discharged the claimant for compelling business reasons that do not constitute a current act of work-connected misconduct. As of July 18, 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/tjc