

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICKY L CAMPBELL**  
Claimant

**APPEAL NO. 08A-UI-03255-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AIR COOLED ENGINES**  
Employer

**OC: 02/17/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Ricky L. Campbell (claimant) appealed a representative's March 27, 2008 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Air Cooled Engines (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on May 13, 2008. The claimant participated in the hearing. Mark Smith, attorney at law, appeared on the employer's behalf. Rodney and Justin Wheeler testified 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 as an employee in 2006. The claimant worked as a full-time mechanic in the backroom of the employer's store. The claimant did not work with customers handling sales, cash, or credit transactions. The claimant did not have anything to do with the front part of the store where the employer worked with customers.

The claimant usually worked until 4:30 p.m. on Fridays. On February 8, a truck that had to be unloaded arrived late that afternoon. While the claimant worked on a piece of equipment, Rodney, the owner, complained about the truck arriving so late. Rodney indicated that he would have to finish unloading the truck because Justin, an employee and Rodney's son, had to leave at 4:00 p.m. Although Rodney asked the claimant to stay at the store until he returned from unloading the truck, the claimant did not hear Rodney say this to him. The claimant has some hearing difficulties and does not hear everything a person may say. This is especially true if the person talking is not directly facing the claimant.

Rodney went to the relieve Justin, who was unloading the truck. Before Justin left work, he noticed customers were in the store. Even though Justin had to leave at 4:00 p.m. on Fridays,

he did not leave until he helped the customers. Justin knew the claimant did not know what to do with any sales transactions. By 4:35 p.m., Justin had taken care of the customers in the store and knew he was very late. Justin left work between 4:35 and 4:45 p.m. The claimant walked out with Justin to go home at the same time. Before Justin left, he asked the claimant if a company truck needed to be moved so the claimant could move his vehicle and told the claimant to have a good weekend.

When Rodney got back to the store from unloading the truck around 5:00 p.m., the store had not been locked and no one was there. Rodney was upset because he thought the claimant would stay until he came back from unloading the truck. Rodney discharged the claimant for failing to follow his instructions and for leaving the store unlocked and unattended on February 15, 2008. The claimant learned he was discharged on Monday, February 18, 2008.

### **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).

The evidence establishes the employer assumed the claimant heard the employer's instruction for him to stay at work until Rodney came back from unloading a truck. When the claimant had not stayed at the store as the employer wanted, the employer discharged the claimant.

The facts establish the claimant made a good faith error in judgment on February 8 when he left work with Justin. The claimant's testimony that he is hard of hearing and did not hear Rodney tell him to stay until he came back from unloading a late arriving truck is credible. The fact the claimant walked out to his car with Justin and Justin did not say anything about locking up the business or asking the claimant to stay until Rodney finished unloading the truck indicated Justin was preoccupied with getting off work so late or it was not a big deal for Rodney to be in the back unloading a truck with no one in the unlocked store. The facts do not establish that the claimant intentionally disregarded the employer's interests. Even though something disastrous could have happened, nothing actually happened.

The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits.

**DECISION:**

The representative's March 27, 2008 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of February 17, 2008, the claimant is qualified to receive benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw