

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN G MAIN

Claimant

APPEAL NO. 09A-UI-01948-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETTE HOLDINGS INC

Employer

**OC: 11/30/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 30, 2009, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 26, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Kevin Rafferty participated in the hearing on behalf of the employer with a witness, Todd Rover.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from September 30, 2008, to October 23, 2008. He was hired as a trailer technician and was told that he would need to have his own set of tools to maintain his employment. He was given the list of tools that he needed.

The claimant left work early on October 23, 2008, because his car had been impounded the night before due to problems with unpaid fines that he hoped to get straighten out with the judge. At the time that the claimant left, he did not have all the tools from the list. His trainers had reported to management that the claimant did not have all the tools for the job.

The claimant reported to work on October 24 and spoke to the employer's human resources generalist, Tamie, about moving to a wash bay position. Tamie told him that he had too many issues going on, and he could not return to work without the tools on the list.

The following week, the claimant met with Todd Rover, the trailer service manager. Rover said they would allow him to come back to work if he showed progress in getting his tools. On November 7, 2008, the claimant called in and spoke to the lead technician. He told the lead that he had gathered the tools on the list, but the tools were in a friend's car. His friend was at the hospital due to a medical emergency, and the claimant had no way to get the tools at that time. The lead technician told the claimant not to bother to bring in the tools because he was no longer employed.

The employer discharged the claimant for failing to get his tools promptly.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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. The claimant made a good faith effort to secure the tools on the list but did not get them fast enough to satisfy the employer.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated January 30, 2009, reference 01, 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