

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANTHONY R BRUNS**  
Claimant

**APPEAL NO. 09A-UI-07409-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THEISENS INC**  
Employer

**Original Claim: 04/05/09  
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

**STATEMENT OF THE CASE:**

Theisens, Inc. (employer) appealed a representative's May 13, 2009 decision (reference 01) that concluded Anthony R. Bruns (claimant) was qualified to receive benefits because the employer discharged him for non-disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2009. The claimant participated in the hearing. Rod Lorenzen appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. 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 employer rehired the claimant on March 13, 2009. The employer hired the claimant to work as a temporary sales floor associate. On March 13, the employer told the claimant to work until 4:00 p.m. The claimant was tired and checked out at 3:07 p.m. The claimant did not ask the employer for permission to leave work early because he did not want management to think he could not do the work. On March 14, the claimant checked out at the end of his shift, 8:00 p.m., and waited with other employees for a manager to tell them they could leave. Lorenzen did not know the claimant waited with other employees for a manager to tell them they could leave.

On March 15, the claimant was scheduled to work. As the claimant was getting ready to go to work, his right leg gave out and he could not get to the phone that was located on the other end of the house. There was no one home with the claimant at that time. The claimant has a muscle disease that results in mobility problems.

On March 16, 2009, the claimant called the employer to ask when he next worked. The claimant told the employer his legs hurt the day before and he was unable to work. The employer did not understand that the claimant could not get to his phone on March 15.

The employer discharged the claimant on March 19, 2009 for failing to call or report to work on March 15, 2009. The employer relied on the employer's attendance policy as the basis for the claimant's discharge. (See Employer Exhibit One.)

**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 employer established business reasons for discharging the claimant. After three days, the claimant did not establish himself as a reliable or dependable employee. On March 13, the claimant used poor judgment when he left work an hour early without first obtaining authorization to leave work early. On March 14, the claimant waited with other employees for a manager to tell him he could leave work. On March 15, the claimant did not report to work or call the employer because he was unable to work and unable to get to his phone. Two of the three days the claimant worked, he did not intentionally fail to work as scheduled. As a result of his medical condition, the claimant was unable to work. The claimant did not commit work-connected misconduct. Therefore, as of April 5, 2009, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 13, 2008 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 5, 2009, 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