

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAM C THOMAS
Claimant

APPEAL NO. 11A-UI-14324-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THOMAS L CARDELLA & ASSOCIATES INC
Employer

**OC: 10/02/11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 26, 2011, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 28, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Meg Hinrich participated in the hearing on behalf of the employer with witnesses Thomas Cardella, Jamal Zietlo, Taralyn Roberts, Zeb Reardon, Steve Brown, and Meri Sell.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a telephone sales representative from May 29, 2007, to October 5, 2011.

The owner of the employer, Thomas Cardella, discharged the claimant on October 5, 2011, because Cardella mistakenly believed the claimant had falsified a request for paid time off to attend his child's school conference. The claimant had filed a proper and timely request for paid time off and had not falsified anything.

After Cardella discharged the claimant, he learned from the computer tech staff that it was possible that the claimant had not falsified the paid time off request. Cardella decided that his decision was hasty and the claimant would be suspended pending an investigation. Cardella wanted the claimant to open his personal email account on a work computer to prove to Cardella that he had made a proper and timely request for paid time off.

Cardella instructed a supervisor to contact the claimant to have him come in on October 10 to meet with Cardella regarding his employment. The supervisor contacted the claimant about coming in to work on October 10, but never told him that the discharge had been rescinded and changed to a suspension pending investigation.

The claimant did not report to the workplace on Monday for the meeting with Cardella, because he did not believe he should have to offer further proof about the paid-time off request and had been advised by his attorney not to go in for the meeting.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof.

The bottom line issue here is whether Cardella's actions negate the unequivocal discharge that the claimant received. In my judgment, for unemployment insurance purposes, the separation must be considered a discharge. The only way for the employer to change the claimant's employment status is by making an unconditional offer of continued employment, which was not done in October 2011 based on the evidence presented in this case.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 evidence fails to show the claimant was discharged for work-connected misconduct based on the evidence presented. He did not falsify the paid time off request.

The claimant remains disqualified from receiving unemployment insurance benefits based on a decision issued on November 7, 2011, imposing an administrative penalty for his benefit year for unreported earnings.

DECISION:

The unemployment insurance decision dated October 26, 2011, reference 02, is affirmed. The claimant's discharge was not for work-connected misconduct. The claimant remains disqualified from receiving unemployment insurance benefits based on a decision issued on November 7, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw