

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

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Appeal Number: 05A-UI-08839-SWT
OC: 07/31/05 R: 02
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 is 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-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 17, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. Telephone hearings were held on September 15 and 16, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, James Byrne, and a witness, Marvin Lopez. Alberto Olguin participated in the hearing on behalf of the employer with witnesses, Brian Jackson, Alfredo Robles, Mary Moore, and Tom Barrigan. Exhibits One and Two were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a production worker from August 4, 2003, to July 27, 2005. The claimant was informed and understood that under the employer's work

rules, the use of profanity and insubordination was prohibited. The claimant had received a written warning on April 21, 2005, for insubordination toward his supervisor.

On July 22, 2005, the claimant slipped at work and injured his back. This was reported to a supervisor. The claimant became upset because he believed the supervisor was unconcerned about his injury. He asked to be sent to the nurse, and when he was asked to go to the office, he directed profanity at the supervisor. He had to be asked several times to go to the office before he complied. He was suspended for three days for his insubordinate conduct. He was informed that he was to report back to work on July 25, 2005, at 10:30 a.m. The claimant reported back to work at the appointed time, but the supervisors insisted that he was late and was supposed to be at work at 10:00 a.m. The claimant tried to explain that he had reported at the time he was told to report. On July 27, 2005, the claimant was discharged. Whether the claimant was discharged for his conduct on July 22 or because the employer believed he was late for the appointment on July 25 is unknown.

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.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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.

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).

All of the employer's witnesses stated that they were not involved in the decision to terminate the claimant, and they admitted that they did not know the exact reason for the claimant's termination. The evidence establishes that the claimant was suspended for his conduct on July 22. If that was the discipline imposed, then the discharge must have been based on something that occurred later. The only thing that happened afterward was that the employer mistakenly believed that the claimant was late on July 25. That reason for discharging the claimant would not be for work-connected misconduct.

DECISION:

The unemployment insurance decision dated August 17, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs