

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN J GOHEEN
Claimant

APPEAL NO. 07A-UI-04599-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

INTERSTATE BRANDS CORP
Employer

OC: 04/08/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Interstate Brands Corporation (employer) appealed a representative's April 25, 2007 decision (reference 01) that concluded John J. Goheen (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2007. The claimant participated in the hearing. John Bartholomew, the human resource manager, appeared 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 on November 11, 2004. The claimant worked as a full-time route sales representative. The claimant knew that if an employee was unable to serve a customer or part of an assigned route, the employer would discharge the employee for being unable to serve all of an assigned route.

In late January 2007, the claimant missed removing some out-of-date product from a store in Ames, Iowa. After the claimant personally talked to the store manager and apologized, the store manager gave the claimant a second chance and allowed the claimant to service his store. The employer gave the claimant a three-day suspension for failing to service this store correctly.

As a result of the problems the claimant experienced with the above store manager, the claimant asked about transferring to another route. The employer did not transfer the claimant.

The week of March 25, 2007, the claimant was on vacation all week and another employee serviced the Ames store. The first time the claimant was in the Ames store after his vacation

was April 2 around lunch time. The claimant learned the store manager wanted to talk to him, but the store manager was at lunch while the claimant was at the store on Monday. When the claimant left the Ames store on April 2, he believed he had properly serviced the store. The claimant took extra precautions to make sure he pulled all out-of-date products after the late January incident.

On Tuesday, the store manager showed the claimant out-of-date product he had pulled at or before 7:00 a.m. the day before. Some of the product was dated March 26 and 27. The claimant tried to explain that he had been on vacation the week before, but the store manager would not listen and informed the employer the claimant was no longer allowed to service the Ames store.

On April 5, the claimant's supervisor gave the claimant the choice of resigning or being discharged. When the claimant would not resign, his supervisor told him he was discharged. Since the employer's corporate attorney must approve all discharges, the claimant was actually suspended as of April 3 and was not discharged until April 17, 2007.

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 had business reasons for discharging the claimant. The claimant knew his job was in jeopardy after he received a three-day suspension in February. The claimant also knew that if he had any more problems at the Ames store, the store manager would not give him another opportunity to maintain his employment. The facts establish the store manager found out-of-date product on his store shelves the morning of April 2. Since the claimant had been on vacation the previous week and did not service the store until late morning or noon on April 2, the claimant did not fail to do his job. The claimant did not commit work-connected misconduct. Even if the claimant had missed some product on April 2, the facts presented during the hearing do not establish that he intentionally and substantially disregarded the employer's interests. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 25, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 8, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css