

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALEJANDRO ORTIZ**  
Claimant

**APPEAL NO. 11A-UI-01193-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CURLYS FOODS**  
Employer

**OC: 01/02/11  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 28, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 27, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Leticia Cvecnich participated in the hearing on behalf of the employer. Exhibits One through Five were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time for the employer as a lead person in the packaging area from August 28, 2009, to December 30, 2010.

The claimant was warned on March 15, 2010, after he mistyped the "used by date" on the packaging printer by entering "6/7/10" instead of "7/7/10." He was warned on December 17, 2010, after he mistyped the "used by date" on the packaging printer by entering "4/26/11" instead of "2/26/11." He was informed that similar performance problems could lead to his termination.

The claimant was discharged on December 30, 2010, when it was discovered that on October 29, 2010, the claimant had not changed the Accu-Sort labels between two orders of roast beef products, which caused a customer to receive an incorrect product, which had to be returned.

**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 misconduct has been proven in this case. Negligence amounting to misconduct requires it to be equal to willful conduct in culpability. The evidence supports ordinary negligence in isolated instances in this case.

**DECISION:**

The unemployment insurance decision dated January 28, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw