

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELOY GARCIA
Claimant

APPEAL NO. 10A-UI-08807-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

OC: 06/28/09
Claimant: Appellant (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's June 15, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. A telephone hearing was held on August 5, 2010. The claimant participated in the hearing. Debra Sgambati, 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 July 27, 2005. He worked as a full-time quality technician. The claimant and other technicians shared a cell phone at work. On May 13, 2010, the claimant's supervisor, Enis, notified the employer that he was identified as Anus on the cell phone's contact list. The employer corrected the spelling of supervisor's name on the phone's contact list.

The following morning, the first shift quality technician reported that the supervisor's name had been changed back to Anus. The claimant was the third-shift quality technician who worked just before the the first shift quality technician worked. When the employer talked to him on May 14, the claimant admitted he changed his supervisor's name on the phone contact list. The supervisor's name had been on the phone contact list as Anus for a year or more. During his shift, the claimant changed the A to an E so he could easily contact or find the supervisor's phone number. On May 14, 2010, the employer suspended the claimant so the employer could investigate the matter.

The employer talked to other technicians and concluded the claimant had not only changed the "E" to an "A" but also changed the "i" to a "u". The claimant only changed the E to an A. On May 24, the employer discharged the claimant for identifying his supervisor in a derogatory and inappropriate way on the employer's cell phone.

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 facts indicate the supervisor's name had been incorrectly inputted on a cell phone's contact list for over a year. On May 13, the supervisor saw the way he was listed and the employer changed his phone contact information to reflect the correct spelling of his first name. When the claimant worked third shift, April 13-14, he changed the first letter of the supervisor's name back to A. The claimant recognized that someone changed the contact information on the cell phone. The claimant asserted that for his convenience he changed his supervisor's contact information from E to A. Given the fact the phone contact listed the supervisor as Anus, a derogatory and inappropriate identification, the claimant's decision to change a letter or letters for his convenience amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant's reason for even changing the E to an A is not reasonable. The employer discharged the claimant for reasons constituting work-connected misconduct. As of May 16, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's June 15, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 16, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw