

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J BURKE
Claimant

APPEAL NO: 12A-UI-03794-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 03/04/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 2, 2012 determination (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. The claimant participated in the hearing. Melissa Rodgers, a representative with Employers Edge, appeared on the employer's behalf. Cheri McClusky testified on the claimant's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 1994. The claimant worked as a full-time CNC operator. The claimant understood that when an employee used nine attendance credits, the employer would discharge the employee. Prior to February 7, 2012, the claimant had all nine attendance credits and his job was not in jeopardy.

The claimant was arrested the evening of February 6. He was incarcerated. He contacted his family and asked his sister and mother to contact the employer so the employer would know he was unable to work. The claimant is not married. The claimant's sister sent the claimant's supervisor an email on February 7 so he would know the claimant was in jail and unable to work. The supervisor responded that the email notification was not acceptable and the claimant had to call the employer. The claimant's mother called the employer on February 7 or 8 to let the employer know the claimant was in jail and unable to work. The employer told the claimant's mother that her call was not acceptable and the claimant had to personally contact the employer.

The claimant could buy not a phone card at the jail until February 19. The claimant called the employer on February 20, or as soon as he was allowed to call. He learned the employer had

terminated his employment on February 18 because, as of that day, he had used up all his attendance credits.

The employer deducted an attendance credit for each day the claimant did not report to work. If the claimant had been able to call and talk to the employer before February 18, the employer could have made arrangements to hold the claimant's job by using the claimant's vacation time or a leave to cover his absences.

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).

In accordance with the employer's attendance policy, an employee must call in an absence. The employer does not accept an email. The employer allows spouses to call in an absence for an employee, but the claimant is not married. Although another division of the employer's company allows family members to call in an employee's absence, the claimant's supervisor required the claimant to personally call instead of a family member. The claimant called the employer as soon as he could buy a phone card. Even though the employer did not accept the notification from the claimant's sister or mother, the employer knew as of February 7 that the claimant was incarcerated and unable to work.

The employer acknowledged that if the claimant had personally contacted the employer before February 18 or before all his attendance credits had been used, the claimant could have made arrangements to maintain his employment by using vacation time. Based on the employer's attendance policy, the employer established business reasons for discharging the claimant. For unemployment insurance purposes, the claimant did not substantially disregard the employer's interests. Even though the employer's attendance was violated, the claimant did not commit work-connected misconduct. As of March 4, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

DECISION:

The representative's April 2, 2012 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 4, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw