

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS G LUCHA
Claimant

APPEAL NO. 11A-UI-03783-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAMSEY AUTO CENTER
Employer

**OC: 02/20/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's March 24, 2011 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for non-disqualifying reasons. The claimant responded to the hearing notice and provided a phone number to contact him for the hearing. The claimant was called for the hearing, but could not be reached at the phone number he provided. As a result, the claimant did not participate in the hearing. Joe Jones, the collision center manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 23, 2010. He worked full-time as a car detailer. The employer's policy informs employees that if they do not call or report to work as scheduled, the employer considers the employee to have voluntarily quit.

Although the employer talked to the claimant about his absences, the claimant's job was not in jeopardy for attendance issues before February 19, 2011. The claimant was scheduled to work on Saturday, February 19, 2011, but he did not call or report to work.

The claimant reported to work as scheduled on Monday, February 21. The claimant told the employer he had not called because he did not have or know the employer's phone number. The employer informed the claimant he no longer had a job, because the employer concluded the claimant had voluntarily quit when he failed to call or report to work the previous Saturday.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not

establish the claimant quit his employment. Instead, the employer initiated the employment separation and ended the claimant's employment when he reported to work on February 21, 2011. The employer discharged the claimant.

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).

Even though the employer had talked to the claimant about his attendance, the employer acknowledged the claimant's job was not in jeopardy for attendance issues before February 19, 2011. The claimant used poor judgment when he failed to look up the employer's phone number to notify the employer he was unable to work as scheduled on Saturday, February 19. While the claimant's failure to call or report to work on February 19 is not condoned, this isolated incident does not rise to the level of work-connected misconduct. Therefore, as of February 20, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's March 24, 2011 determination (reference 04) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of February 20, 2011, 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