

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

STANLEY B BAKER
113 LINCOLN
OTTUMWA IA 52501

UNICCO SERVICE COMPANY
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-02161-DWT
OC 02/01/04 R 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

UNICCO Service Company (employer) appealed a representative's February 20, 2004 decision (reference 01) that concluded Stanley B. Baker (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 March 17, 2004. The claimant participated in the hearing. Tina Schaffmer, 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 August 26, 2002. He worked full time as a pre-coat technician. When the claimant first started working, the employer told him about the employer's policy. One of the employer's rules indicated an employee would be discharged immediately if the employer found an employee sleeping on the job.

The claimant reported to work on January 13, 2004 at 6:00 a.m. He started his normal work duties by emptying some hoppers and taking silo readings. The claimant was in the pre-coat shack around 7:30 a.m. completing some paperwork. The claimant does not like working with fluorescent lights and did not have the light on in the shack. Mike Pritts, the sanitation manager, opened the shack door when he noticed no lights were on. When he opened the door, the claimant jumped as though he had been startled or had just woken up. After Pritts asked if the claimant could stay awake long enough to work, the claimant just laughed. The claimant continued working another four hours.

At 11:30 a.m. the employer discharged the claimant because Pritts concluded the claimant had been sleeping when he opened the pre-coat shack door. When the claimant signed his termination papers, he did not tell the employer this was wrong because he had not been sleeping, he just signed the paperwork as the employer instructed him to do.

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 established business reasons for discharging the claimant. The evidence does not, however, establish that the claimant was sleeping at work the morning of January 13, 2004. Instead, the facts show the claimant did not have a light on in a building and jumped when Pritts opened the door to a building. While Pritts made a reasonable conclusion based on his observations, it is also just as reasonable to conclude the claimant jumped because Pritts startled him when he opened the door because the claimant did not realize anyone was present. Without Pritts' testimony, the claimant's testimony must be given more weight than the employer's reliance on information from witnesses who did not testify at the hearing. A

preponderance of the evidence indicates the claimant was not sleeping at work on January 13, 2004. Therefore, the evidence does not establish that the claimant committed work-connected misconduct. As a result, the claimant is qualified to receive unemployment insurance benefits as of February 1, 2004.

DECISION:

The representative's February 20, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 1, 2004, 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.

dlw/b