

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A ANDERSON
Claimant

APPEAL NO: 14A-UI-12726-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AIRGAS USA LLC
Employer

OC: 11/09/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 5, 2014 determination (reference 02) 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 at the January 7 hearing with his attorney, Gary McClintock. Lori Klocke, 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 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 November 1977. He worked as a full-time driver. Prior to September 25, 2014, the claimant's job was not in jeopardy.

On September 25, the claimant took his prescription medication later than normal. The claimant's medication contains a diuretic. While the claimant working in a bunker or a storage area where the employer stores empty medical cylinders, he suddenly had to urinate. The restroom was about five minutes away. The claimant did not believe he could make it to the restroom and partially relieved himself by urinating on shrink-wrap plastic that was wrapped around empty medical cylinders. An employee, J., walked by and saw the claimant standing facing a pallet of empty medical cylinders. J. believed the claimant had been urinating when he walked into the area. After J. saw the claimant, the claimant went to the restroom. J. returned to the area where the claimant had been standing and based on his observation concluded the claimant had urinated on the plastic shrink-wrap.

After the claimant finished in the restroom, he planned to wipe up and clean anything that had urine on it. Management learned about J.'s observation. Before the claimant had an opportunity to clean anything up, the employer sent him home early to investigate this incident.

The employer investigated and concluded the claimant had been urinating when J. saw him. Prior to September 29, the claimant acknowledged he had urinated. Even though the claimant's job was not in jeopardy before September 25, the employer discharged the claimant on September 29 for conduct unbecoming an employee while on duty.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The evidence indicates that on September 25, the claimant was unable to get the restroom in time to relieve himself. While the administrative law judge does not condone the claimant's September 25 conduct, as a result of medication he took he had to urinate and could not make it to the restroom. The claimant used poor judgment, but under the facts he did not commit work-connected misconduct. Therefore, the claimant is qualified to receive benefits.

DECISION:

The representative's December 5, 2014 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant's lack of good judgment under the facts of this case do not amount to work-connected misconduct. As of November 9, 2014, 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/css