

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**BRENDEN E HENRY**  
Claimant

**APPEAL NO: 20A-UI-02189-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BES-T INVESTMENTS LLC**  
Employer

**OC: 02/16/20**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the March 9, 2020, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 24, 2020. The claimant participated in the hearing. Steve Berends, Area Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general store manager for Bes-T Investments (Papa Murphy's) from September 17, 2019 to February 18, 2020. He was discharged for neglecting the store February 16, 2020.

Sunday, February 16, 2020, was the claimant's scheduled day off and he goes to New Virginia to care for his father on his days off. He received a text message February 16, 2020, stating an employee did not have a ride to work and the claimant told him to post that information on the employer's employee website, Slack. The claimant texted the assistant manager and said the employee was running late and he could not help with the store that day. Area Manager Steve Berends tried to call the claimant and the claimant texted him at 11:12 a.m. stating, "I am going to have to check out of work stuff. I know you understand. I just hope this isn't a problem." The store opened on time.

February 14, 2020, is the employer's busiest day of the year and the employer was disappointed with the claimant's store's sales. There were customers complaining and customers walking out, an employee quit and the sales were down "drastically." The claimant believed the store performed approximately the same as the other stores in the area.

The claimant received a few undocumented coaching sessions about the performance of the store but was never issued a verbal or written warning. The employer terminated the claimant for “negligence and neglecting the store” February 16, 2020.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. “Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

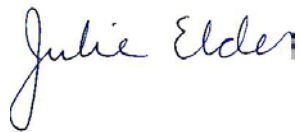
The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and 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).

While the claimant was not physically available to go into the store February 16, 2020, it was his day off and he was available by phone. He was often unavailable to go into the store on his days off because he cared for his father in New Virginia and the employer never told him it had an issue with that practice in the past. The store opened on time February 16, 2020, and while there may have been some confusion about staffing the store that day, the claimant was not negligent and did not intentionally neglect the store by not being available to go into the store on his day off.

Under these circumstances, the administrative law judge finds the employer has not met its burden of proving the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The March 9, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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Julie Elder  
Administrative Law Judge

April 27, 2020  
Decision Dated and Mailed

je/scn