

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN W HANSON
Claimant

APPEAL NO: 14A-UI-04477-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFING SERVICES
Employer

OC: 04/06/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 25, 2014 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 at the May 19 hearing. Steve Doworsky, the owner, 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 on April 23, 2013. Part of the claimant's application process included completing an offer of position form. The form asks if a person has any pre-existing condition that could affect his performance. Even though the form indicates the claimant does not have any pre-existing conditions, the claimant told S., the employee he talked to when completing the application process, that he had issues with his knees. The claimant's tendons were stretched and he told S. that eventually he may need knee surgery. Even though the claimant reported this to S., he did not know if she made a note of this condition. The employer assigned the claimant to a temp-to-hire position at AgriVision as an inventory control specialist.

AgriVision was about to hire the claimant when the employer received information on February 18, 2014, that AgriVision's employees reported the claimant made comments that when he had insurance he would have surgery on his bad knees. The claimant does not anticipate he will need knee replacement surgery for another 10 to 15 years. He was looking forward to having insurance to be cover shots he currently receives behind his knees.

When the employer reviewed the claimant's application form and offer of position form, the employer concluded the claimant falsified information. The employer then ended the claimant's employment for falsifying information when he applied to work for the employer. S. notified the

claimant by phone on February 18 that his job at AgriVision was over. The claimant initially assumed the employer would assign him to another job. It was only later that the claimant learned the employer would not assign him to another position because the employer concluded he falsified information on his offer of position form.

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).

If the claimant falsified information on his application form or on the employer's offer of position form, he committed work-connected misconduct. In this case, the evidence does not establish that the claimant falsified problems he had with his knees before the employer assigned him to AgriVision. The claimant's testimony about what he told S. when the offer of position form was completed must be given more weight than the employer's reliance on hearsay information. The employer's witness did not talk to the claimant when he started or when the offer of position form was completed and discussed. Based on the testimony presented, S. must not have considered the claimant's knee issues important enough to make a note of this on the offer of position form.

The employer established business reasons for discharging the claimant, but the claimant did not falsify issues he had with his knees when he completed the application paperwork. He did not commit work-connected misconduct. As of April 6, 2014, the claimant is qualified to receive benefits.

DECISION:

The representative's April 25, 2014 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of April 6, 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/pjs