

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD R NOACK
Claimant

APPEAL NO. 07A-UI-11030-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARONA CORPORATION
Employer

**OC: 10/28/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 20, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 13, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from April 26, 2007, to October 24, 2007. At the point that his employment ended, he was working as a sales manager in the employer's Davenport store. On October 24, 2007, a manager informed the claimant that his employment was going to be terminated because it did not appear at the claimant had his head in his job. The claimant was given the opportunity to resign, but he would have been discharged for unsatisfactory job performance if he had not resigned. The claimant submitted a resignation.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The claimant's separation must be treated as a discharge for unemployment insurance purposes. The claimant would have been discharged if he had not resigned.

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 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).

No willful and substantial misconduct has been proven in this case. At most, the evidence establishes the claimant was dismissed for unsatisfactory work performance, which does not meet the definition of misconduct under the law.

DECISION:

The unemployment insurance decision dated November 20, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css