

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN T STENGER
Claimant

APPEAL NO: 07A-UI-08674-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADEL-DES MOINES HTG & COOLING
Employer

OC: 08/12/07 R: 02
Claimant: Respondent (1)

Section 96.5-2- a - Discharge

STATEMENT OF THE CASE:

Adel-Des Moines Heating & Cooling (employer) appealed a representative's September 7, 2007 decision (reference 01) that concluded Brian T. Stenger (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 September 25, 2007. The claimant participated in the hearing. Preston Hallway, the owner, 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 worked for the employer for over seven years. The claimant worked as a full-time service technician. When the claimant started working for the employer, he informed the employer that his goal was to eventually start his own business or buy into the employer's business. The claimant recently decided he would never get the opportunity to buy into the employer's business and knew he would have to start his own business.

The claimant understood that when he was scheduled to work on-call over the weekend, the employer expected him to answer his company phone and make service calls. If an employee was unable to work on-call, the employer made other arrangements. In the past, the employer called the claimant to do a service call over a weekend even though another employee was scheduled to work that weekend.

On Saturday, August 11, the claimant answered a phone call Saturday and made a service call. Later on Saturday, the claimant was talking to another employee and reported problems he had hearing the employer's new phone ring. While the claimant talked to the employee, that employee received a call from the employer. The claimant asked his co-worker if he there was

a service call to make and the employee indicated he had not been asked to make any service call. The claimant did not know why the employer called the other employee, but assumed that if the co-worker had not been asked to do a service call, the employer had not called him to do a service call. The claimant knew of no other phone calls he received from the employer the rest of Saturday or Sunday.

The employer called the claimant at least one other time for a service call that weekend, but the claimant did not answer his phone or call back the employer. Even though the employer did not have any problems when the claimant worked on-call before, the employer discharged the claimant on August 13, 2007. The employer discharged the claimant because there had been work for the claimant to do and he did not do it when he failed to answer his phone. The employer thought the claimant intentionally failed to answer the phone or respond to the employer's calls because he was preoccupied with setting up his own business.

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 section 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).

Although the employer heard rumors the claimant was going to start his own business, the claimant told the employer about that goal when he first started working. Although the claimant planned to start his own business, he had not yet started his business when he was discharged on August 13, 2007. After he was discharged, the claimant pursued his own business and sent out a mass mailing and hand-delivered some letters to potential customers, including the employer's customers.

The claimant knew and understood when he worked an on-call weekend; he was required to make emergency service calls. When the claimant knew about a service call the weekend of August 11, he went and completed the work. The claimant had problems hearing the employer's new phone ring when a call came in. As far as the claimant knew the employer did not contact him about any service calls with the exception of the one he went to that weekend. The employer, however, had other work for the claimant to do and attempted to contact the claimant. The claimant did not respond to any other calls that weekend. The employer concluded the claimant was busy setting up his own business and intentionally failed to do work the employer needed him to do that weekend. If the facts supported this assertion, the claimant

would have committed work-connected misconduct. The facts do not, however, establish that the claimant intentionally failed to perform work or intentionally failed to follow-up on calls the employer needed him to do. The claimant did not commit work-connected misconduct. As of August 12, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 7, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 12, 2007, 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.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs