

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY J VAN ECK
Claimant

APPEAL NO: 12A-UI-04035-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/11/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's April 6, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing with his witness, Robin Van Eck. David Williams, a TALX representative, appeared on the employer's behalf. Rochelle Thompson, the administrator; Jill Wilson, the dietary supervisor; and Randy Gillson, a cook, testified on the employer's behalf. During the hearing, Employer Exhibits One through Four were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 December 2008. He worked part-time as a dietary aide. The claimant's job included taking out the trash in his area, mopping and sweeping the floor in his area, stocking the breezeway, and washing and putting away dishes.

The employer has a progressive discipline procedure. If there is an issue that needs to be addressed, the employer first gives an employee a verbal warning. The next steps are written warning, final written warning, and termination. The claimant received a documented verbal warning on August 2, 2011. He received this warning for the way he interacted with co-workers. (Employer Exhibit One.) The employer gave him a written warning on August 16. He received this warning for allegedly throwing chairs around in the smoking area. (Employer Exhibit Two). On August 25, the employer gave the claimant a final warning for leaving his work area dirty. (Employer Exhibit Three.) After he received the final written warning, the claimant understood his job was in jeopardy.

Sometime before March 3, 2012, the claimant reported problems he had with Gillson. The claimant considered a comment she made to him as harassment. On March 3, the claimant

worked as scheduled. When Robin Van Eck came to work after the claimant left, she walked through his work area. She did not notice any problems with the cleanliness of his work area.

When Gillson came to work the morning of March 4, she saw dirty dishes in the sink, a dirty drink cart, the cappuccino area was not clean, food was on the floor, trash not been taken out, and a cloth napkin or napkins were in the trash. (Employer Exhibit Four.)

Gillson complained about the way she found the kitchen the morning of March 4. On March 5, the employer talked to the claimant and he denied he left the kitchen dirty when he went home on March 3. The claimant told the employer he had mopped and swept the kitchen floor, he took out the trash, and the drink cart had been cleaned and sanitized before he left. After the claimant leaves work, anyone has access to the cappuccino machine. Aides and/or residents many times do not clean up when they use the cappuccino machine. After the claimant leaves work, aides bring dirty dishes to the kitchen and put them in the kitchen sink.

Since the claimant had already received a final written warning for similar problems in late August 2011, the employer discharged him for failing to do his work on March 5, 2012.

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).

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).

The employer acknowledged that if Gillson had not complained about the way the claimant left the kitchen the morning of March 4, the employer would not have discharged him on March 5. Since the claimant's witness did not notice any problems with the way the claimant left his work area after he left on March 3 but before Gillson arrived on March 4, some, but probably not all, of Gillson's complaints occurred after the claimant left work. Aides could have easily brought back dishes from residents' rooms, could have spilled food on the floor and used the cappuccino machine that night and left that area messy. Even if the claimant did not take out the trash during his last shift, this would not rise to the level of work-connected misconduct. The fact the employer had not received any complaints about the claimant since late August 2011 supports the claimant's testimony that he was doing his job.

The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of March 11, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's April 6, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 11, 2012, 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/kjw