

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAY D MILLER JR
PO BOX 331
DUNKERTON IA 50626 0331

SERVICE SIGNING LC
PO BOX 158
CEDAR FALLS IA 50613 0158

MICHAEL PETERSON
ATTORNEY AT LAW
321 E 4TH ST
WATERLOO IA 50704

MARK FRANSDAL
ATTORNEY AT LAW
PO BOX 627
CEDAR FALLS IA 50613 0627

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jay D. Miller, Jr. (claimant) appealed a representative's June 15, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Service Signing LC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2005. The claimant participated in the hearing with his attorney, Michael Peterson. Mark Fransdal, attorney at law, represented the employer. Allison Baugher, the claimant's former supervisor, and Pat Budke appeared on the employer's behalf. Claimant's Exhibit A was offered and admitted as evidence. 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.

Appeal Number: 05A-UI-06543-DWT
OC: 01/02/05 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 29, 2001. The claimant worked as a full-time seasonal labor. Baugher has been the claimant's supervisor since he began working.

During his employment, the claimant reprimanded co-workers for not doing their job correctly. At times, the claimant became so upset with co-workers he threw an object. Baugher believed some younger employees did not want to work with the claimant. At various times, Baugher talked to the claimant and told him to control his temper at work.

Prior to May 23, the claimant's job was not in jeopardy and there had not been any problems between the claimant and Baugher. On May 23, the claimant and two co-workers loaded material onto a truck as Budke directed them to do. When Baugher saw how the material had been loaded on a truck she was upset and yelled at the claimant and his co-workers for loading the material improperly. The claimant tried to explain to Baugher that he and his co-workers had been following Budke's directions. The claimant raised his voice to the same level that Baugher spoke to him. The claimant and his co-workers reloaded the material onto the truck according to Baugher's directions. When they finished with this job, the claimant went to Baugher to find out what work she wanted done next.

The employer did not have any more work for the claimant and his co-workers to do that day. Baugher told the claimant and his co-workers they could go home. Baugher also told the claimant that if he ever yelled at her again, she would discharge him. Baugher was about 20 feet from the claimant when she made this comment with some profane language. The claimant responded by telling Baugher not to yell him. Baugher then discharged the claimant.

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 established a business reason for discharging the claimant on May 23, 2005. On May 23, 2005, Baugher became upset when the claimant tried to explain to her in front of other employees why he and two co-workers loaded a truck a particular way. Later, after the truck had been reloaded to Baugher's satisfaction and there was no more work for the claimant and his co-workers to do, Baugher warned the claimant in a raised voice with some profanity that if he ever yelled at her again in front of employees, she would discharge him. Instead, of remaining silent, the claimant responded by telling Baugher that she should not yell him. The claimant displayed poor judgment when he responded to Baugher's warning while she was still upset with him. The claimant's response does not, however, rise to the level of work-connected misconduct. Therefore, as of May 22, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 15, 2005 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of May 22, 2005, 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.

dlw/sc