

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALVIN W DREESMAN
Claimant

APPEAL NO. 12A-UI-12290-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABCM CORPORATION
Employer

OC: 09/16/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 8, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 5, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Ronald Pepples, Attorney at Law. Sharon Quayle participated in the hearing on behalf of the employer with witnesses, Deb Prier, Rayne Nolte, and Deanna Underwood. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as the maintenance supervisor for the employer from February 18, 2008, to September 18, 2012. The employer is a nursing home facility in Aplington, Iowa.

In August 2012, the employer decided to replace an outdoor deck and ramp. Corporate carpenters were to do the actual construction, but the claimant was responsible for supervision of the project. The claimant and management initially did not think the project required a building permit.

In mid-August, the employer hired Aplington's mayor who owns an excavating business to drill holes for posts on the project. A couple of days later, the mayor contacted the claimant and told him it would be a good idea to get a building permit for the project. The claimant asked the mayor if he believed there would be any problem with the city council approving the permit. The mayor replied that they had never turned one down before and he did not think it would be problem.

On August 20, the claimant filed for a building permit with the city clerk's office. The clerk told the claimant the permit would have to be approved before construction and the next meeting was on September 21. He told the clerk that they were continuing their work on the project.

Later, at a staff meeting, the administrator asked the claimant about the project. He told her that the carpenters would be coming back to work on the project. He told the administrator that when he went to get the building permit, the clerk had said a permit would need to be approved before construction continued, but he believed the mayor would push it through. The administrator did not insist that the claimant stop work on the project based on what the city clerk had said.

On September 12, the city council denied the permit and fined the employer \$250.00 for working on the project before the permit was approved.

On September 18, 2012, the administrator discharged the claimant for continuing to work on the project without a permit in violation of the city ordinance and giving her the impression it was permissible.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. At most, the claimant exercised poor judgment by accepting what the mayor said as an assurance that the permit would be approved, despite the city clerk's admonition that the permit would need to be approved before construction. The administrator contended that the claimant misled her into believing what he was doing was permissible. In fact, the claimant told her exactly what the city clerk had said but suggested the mayor would push it through anyway. The administrator went along with that. It turned out that the claimant was wrong, but I cannot conclude misconduct was shown under the facts of this case.

DECISION:

The unemployment insurance decision dated October 8, 2012, 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