

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANE WELDON**  
Claimant

**APPEAL NO: 14A-UI-04291-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VENDTECH-SGI LLC**  
Employer

**OC: 03/30/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's April 22, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated at the May 13 hearing. Keith Saunders and Logan Jackson, the area manager, appeared on the employer's behalf. During the hearing, Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 July 2012. He worked as a full-time security officer at a Federal building. Chris Ulmer and Logan Jackson supervised the claimant. Prior to February 27, 2014, the claimant's job was not in jeopardy.

On February 27, 2014, the employer learned the claimant had made two copies of the guard shack key. The claimant kept one copy and gave the other copy to another employee who worked with the claimant as a security officer. The claimant made a copy of the guard shack key so once he was done with his shift; he would not have turn in the guard shack key which took about two minutes of the claimant's time. The claimant asked another contractor, L B & B, employee if a copy of the guard shack key could be made. The claimant understood he could make a copy of the guard shack key. L B & B is another contractor that works at the Federal building. The claimant did not ask his supervisors if he could make a copy of the guard shack key. The claimant made a copy of the guard shack key before February 27, 2014.

On February 27, the employer learned the claimant had made a copy of the guard shack key when the original key was missing for 12 hours. The employer retrieved the copy of key the other employee had almost immediately. The employer did not ask the claimant for the key he made and kept until March 12, 2014.

On March 13, 2104, the employer suspended the claimant to investigate the fact that he made a copy of the guard shack key without his supervisor's permission. On April 11, the employer discharged the claimant for violating the employer's conduct policy about not removing any government property and that all keys are used to perform the job assigned. The employer concluded the claimant made keys without proper authorization and the claimant's action could have resulted in a security breach.

Employees who work for GSA indicated that because the guard shack was not on the NSFB key list, there was no reason a duplicate key could not be made. R.K., a GSA Facility Operations Specialist once told the claimant that if he needed a key, he could make one. (Claimant Exhibits A and B.)

### **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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. Even though the claimant used poor judgment when he did not specifically ask his immediate supervisor if he could make a duplicate guard shack key, the claimant asked other contract employees if he could make a key. While the administrative law judge recognizes that an L B & B contract employee had no authorization to grant the claimant permission to make a duplicate key, the claimant did not hide the fact he made a key and mistakenly assumed it was not a problem to make a duplicate guard shack key. Also, a GSA employee once told the claimant that if he needed a duplicate key, he could make one. Finally, since the guard shack was not on the NSFB key list, the employer's argument that the claimant's action in making a duplicate guard shack key was a potential security breach is questionable.

The claimant used poor judgment when he made the duplicate key without his supervisor's permission. Based on the facts in this case, the claimant did not commit work-connected misconduct. As of March 30, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's April 22, 2014 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant's failure to receive permission from his supervisor amounts to poor judgment in this case and not work-connected misconduct. As of April 30, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css