

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM FRENCH
Claimant

APPEAL NO. 08A-UI-06723-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLEETGUARD INC
Employer

OC: 06/22/08 R: 02
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

William French (claimant) appealed an unemployment insurance decision dated July 21, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Fleetguard, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2008. The claimant participated in the hearing with Attorney Kenneth Butters. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Claimant's Exhibits A through D were admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was employed as a full-time assembler from August 11, 1989 through June 24, 2008, when he was discharged due to a violation of the code of conduct. He had been working the hours from 7:15 a.m. to 3:15 p.m. for approximately ten years. In December 2007, the employer decided that all employees on medical restrictions had to work from 9:15 a.m. to 5:15 p.m. The claimant was on medical restrictions and worked the later shift. On March 11, 2008, the claimant's health care provider provided a medical restriction that required him to be off work at 4:00 p.m. daily for physical therapy. CHD Meridian Healthcare provided an employee medical status report that confirmed the claimant needed to be off work at 4:00 p.m. for therapy and that he needed to work from 7:15 a.m. to 3:15 p.m. The claimant personally provided this medical documentation to the employer. He did not take any further action to communicate with the employer about it because he believed it was settled and began working the earlier shift so he could attend water aerobics. Three months later on June 18, 2008, the claimant was sent to human resources, where he was asked if he attended the YMCA in Forest City, Iowa. The claimant never went to Forest Center but was taking water

aerobics in Buffalo Center. The human resources employee told the claimant there would be consequences for working the early shift instead of the later shift. The claimant was placed on suspension on June 19, 2008 and discharged on June 24, 2008 with no further explanation.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

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 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).

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of job misconduct as that term is defined in the above stated Administrative Rule. The employer failed to meet its burden. Work-connected misconduct has not been established in this case and benefits are allowed.

DECISION:

The unemployment insurance decision dated July 21, 2008, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw