

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK R EVANS

Claimant

APPEAL NO. 12A-UI-04608-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ALLOY WHEEL SOLUTIONS OF EASTERN
IOWA**

Employer

OC: 07/10/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 20, 2012, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 15, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Francis Dutton participated in the hearing on behalf of the employer with a witness, Rodney Hudepohl. Exhibits One through Three were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a mobile wheel technician from July 29, 2011, to March 29, 2012. The claimant was given a wheel repair route to maintain. The claimant's job involved driving to used car lots on his route, walking the lots and writing down all wheels needing repairs on a lot walk sheet, and presenting the sheet to the dealership's decision maker to obtain approval for the wheel repairs. When wheels were approved for repair, the claimant was required to follow the steps for repairing the wheels at the lot location in his repair trailer.

On December 12, 2011, the claimant was given a documented verbal warning for unsatisfactory work performance. He was warned that his wheel repair quality was unsatisfactory and sales had declined in November. He was warned that he needed to thoroughly walk the car lots and write down all the wheels needing repairs and get approval for the repairs. He was warned to improve his attitude and not display frustration.

After the warning in December 2011, the claimant continued to attempt to make all the stops on his route. Oftentimes, he would have a day's worth of wheel repairs to do at a dealership that would cause him to be unable to complete his other scheduled stops that day. When that happened, he called the dealerships he could not get to to inform them that he would not be there and also called his supervisors. Generally, the person at the dealership would tell him to

stop by the next week at the scheduled time. There were also times when he would stop or call a dealership and the decision maker was in a meeting or not available. As a result, there may have been a week or more between stops. The claimant never deliberately neglected to call on the dealerships on his route. He was not as proficient in his work or skilled in wheel repair as other wheel technicians. He had not had any similar job in the past and believed he needed more training. He was actively working during his work hours—walking lots, presenting lists to decision makers, repairing wheels, and stopping at locations to drum up new work. The claimant never misrepresented that he had stopped at a dealership and walked a lot when he had actually not done so.

In mid-March 2012, an experienced wheel technician, Cory, was sent out to some of the dealerships on the claimant's route. He was successful in getting wheel repairs approved at locations where the claimant had not been successful. Some dealership personnel mentioned that it had been awhile since the claimant had stopped by.

When Cory reported back the results of his stopping at dealerships, the claimant's supervisors became convinced that the claimant was misrepresenting his work activities. They were dissatisfied with his wheel repair quality and believed he was causing a competitor to gain a foothold in their market. As a result, the employer discharged the claimant on March 29, 2012.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

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 § 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 because his work performance did not meet company standards, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful misconduct has been proven in this case. The claimant was actively working performing his job duties each day but did not have the necessary skill set to perform the job to the employer's satisfaction. The fact that Cory

convinced some dealerships to approve more wheel repairs could be attributed to superior salesmanship. I am not convinced by the evidence that the claimant was loafing or lying about walking car lots and presenting lot sheets to decision makers.

The rule provides that “inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances” is not disqualifying misconduct. The claimant’s work performance falls in these categories.

The employer's account is not chargeable for benefits paid to the claimant since it is not a base period employer on this claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated April 20, 2012, reference 03, is affirmed. 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/pjs