

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURENCE D TOBIN

Claimant

APPEAL NO. 08A-UI-00548-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEEF PRODUCTS INC

Employer

**OC: 08/19/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 8, 2008, reference 04, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 31, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jennifer Horken participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as a groundskeeper for the employer from October 16, 2007, to December 17, 2007. He was discharged for alleged performance issues during his probation. No specific information was provided about these issues.

The claimant was discharged because the employer believed he had not removing snow promptly in early December 2007. He had worked a full day from 7:00 a.m. to 6:00 p.m. and had the next day off. Because snow was forecast overnight, the claimant told the night-shift supervisor to call him if snow removal was needed. When he was contacted in the morning about removing snow, he reported to work immediately and worked on his day off to clear the snow. The employer faulted him for not coming in on his own and earlier. He was also accused of running into a pole with a skid loader, but this accusation is false. Once the claimant accidentally ran into a snow bank and may have damaged the taillight. No plastic shards were found from the broken lens at the site so the claimant believes the damage happened earlier.

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.

Iowa Code section 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).

No willful and substantial misconduct has been proven in this case. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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. 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 January 8, 2008, reference 04, 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/css