

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS MOSIER
Claimant

APPEAL NO. 07A-UI-05509-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC
Employer

**OC: 05/06/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Travis Mosier (claimant) appealed an unemployment insurance decision dated May 23, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Custom-Pak, 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 June 14, 2007. The claimant participated in the hearing. The employer participated through Vicky Rixen, Human Resources Coordinator. Based on the evidence, the arguments of the parties, 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 manufacturing team member from February 20, 2006 through April 24, 2007, when he was discharged for insubordination. At the end of his shift on April 24, 2007, the claimant's coach told him to blow out the area but the claimant reportedly ignored the directive. The third shift supervisor coming on duty also told the claimant to blow out the area and the claimant told him to "shut up." The claimant had received several other unrelated disciplinary warnings, but they were not considered when making the determination to discharge him. He contends he was steadily working when told to blow out the area by his coach and could not follow that directive because the tool was being used by another employee. He further contends that he and the third shift supervisor are friends and he said "shut up" in a joking manner. Neither the coach nor the third shift supervisor participated in the hearing.

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).

The claimant was discharged for insubordination when he reportedly ignored one supervisor's directive and told another supervisor to "shut up" when given a second directive. The claimant denies any wrongdoing and the employer only offered hearsay evidence. The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of such conduct. The employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established. The claimant is allowed unemployment insurance benefits.

DECISION:

The unemployment insurance decision dated May 23, 2007, 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