

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A RAHMATULLA
Claimant

APPEAL NO: 07A-UI-04075-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASHINGTON INVENTORY SERVICES INC
Employer

**OC: 03/04/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2 a- Discharge

STATEMENT OF THE CASE:

Washington Inventory Services, Inc. (employer) appealed a representative's April 3, 2007 decision (reference 05) that concluded John A. Rahmatulla (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 8, 2007. The claimant participated in the hearing. Jason Bajcz, a representative with UCM Specialists, Inc., appeared on the employer's behalf with Jimmy Tripp, an area manager, testifying on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 7, 2006. The claimant worked 20 to 40 hours a week as an inventory associate. Tripp supervised the claimant. At the time of hire, the claimant received an employee handbook. The handbook informed the claimant that if an employee had three no-call, no show incidents in a six-month time frame, the employer would discharge the employee. When an employee is unable to work as scheduled, the employer requires the employee to give a 24-hour advance notice.

On November 17, the claimant did not report to work for a two-day assignment. The claimant did not work November 17 or 18. The next week the employer gave the claimant a written warning for having two no-shows, no reports these days. The warning informed the claimant that if he had another no-show, no-report incident, the employer would discharge him.

The claimant did not report to work as scheduled on December 14. If the claimant contacted the employer, he did not give the employer a 24-hour advance notice. On December 26, the claimant was scheduled to leave for a job site in the employer's van at 3:00 a.m. The claimant

incorrectly set his alarm and did not get up until 2:30 a.m. By the time the claimant contacted the office, the van had already left for the job. The claimant knew he was scheduled at another job on December 27. The claimant was scheduled to leave for this job in the employer's van at 5:00 a.m. On December 26, the claimant did not feel well. The claimant did not immediately contact the employer because he hoped he would get better. When the claimant continued to be nauseous, he contacted the employer around 12:05 a.m. on December 27 and left a message indicating he was ill and unable to work as scheduled. On December 28, the employer discharged the claimant for having too many no-call, no-show incidents.

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 section 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. Since the employer did not discharge the claimant until December 28, the no-call, no-show December 14 incident is not a current act that can be used to disqualify the claimant from receiving unemployment insurance benefits. The employer did not discharge the claimant until he did not report to work on December 26 and 27, 2006. Even though the claimant did not give the employer 24 hours advance notice, he contacted the employer in a reasonable time after he overslept and concluded he was not going to be well enough to work. The facts do not establish the claimant had a habit of oversleeping. There is no evidence to rebut the claimant's testimony that he was ill and unable to work on December 27, 2006.

A preponderance of the evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 3, 2007 decision (reference 05) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 4, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefit paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs