

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY M HEATH
Claimant

APPEAL NO: 12A-UI-09591-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEARS ROEBUCK & CO
Employer

OC: 07/01/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 31, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing with his attorney, Ben Roth. Beth Anderson, the area human resource manager, and Kevin Taylor appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in February 2006. He worked as a full-time in-home service technician. Taylor became his supervisor in April 2012. Prior to May 5, the claimant's job was not in jeopardy and had been praised for his good work. After Taylor saw the claimant's business cards in the company vehicle on May 7, the employer reviewed the claimant's time records. Taylor had monitored time records prior to May 7 and had not noticed any problems.

After thoroughly reviewing the claimant's records, the employer noted several discrepancies or questionable entries. On April 5, the claimant had two unscheduled stops for over 30 minutes and he punched in his two breaks after his last call. His last breaks started at 5:25 and ended at 6:19 p.m. Also, the employer's vehicle was parked at the claimant's appliance repair store for an hour and 40 minutes. On April 10, the claimant reported he had slipped on ice at this home and was unable to work. The employer started short-term disability for the claimant on April 10. The claimant did not return to work until April 25, 2012.

On April 25 the claimant ended his route at 4:55 p.m., but ended his day at 6:01 p.m. He arrived at his home at 4:30 p.m. On April 27, the claimant made an unaccounted stop for over two hours and he recorded a 30-minute break after his last call. On May 2, the claimant made several unaccounted stops of 30 minutes or more. He arrived at his home at 5:57, but did not

end his work day until 20 minutes later. On May 3, the claimant started his day 15 minutes after he punched in because he stopped at his business for 15 minutes before he went to his first call. He went back to his business at 1:07 pm, but did not end his route until 1:30 p.m. and he ended his day at 2:30 after he got home at 2:15 p.m. On May 5, he stopped at his business for 39 minutes before he left to go to his first customer.

The claimant's previous supervisor trained the claimant and told him that when he was unable to take a break during the day, he could take it at the end of the day. Also, at the end of his assigned route, the claimant could stop and pick up groceries if it was on his way home. The claimant understood he was not required to go directly home. When the claimant stopped at his business before he went to his first service call, he stopped to pick up his hand tools that he used for both his personal business and the employer's customers. On April 27, the claimant worked at the employer's store for over two hours. Since the employer did not have the location of the "unaccounted for stops," the claimant surmised they could be gas and restroom stops. At the end of the day, the claimant completed paperwork and stocked the van. Parts were sent to the claimant's home and he put them in the van after he received them.

The claimant opened his personal business on April 16. The claimant did not service any of his personal customers or solicit any personal customers while he was on the employer's clock. He had business cards in the truck to give to his mother to distribute.

On May 11, the claimant contacted the human resource department and learned he had not reported any hours for April 23 and 24 and needed to submit these hours. Neither the claimant nor the human resource specialist remembered that he was on short-term disability and received or should have received short-term disability benefits for these two days. Thinking that he had worked and not reported his hours, the claimant submitted hours by making them up for these two days.

On May 29, the employer talked to the claimant about the results of the employer's investigation. The employer discharged him on May 29 for using the employer's vehicle for personal reasons, for failing to report his time accurately and starting a business that resulted in a conflict of interest by competing with the employer.

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 § 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or

3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant opened his business on April 16. Even though he stopped at his business location to pick up his personal hand tools that he needed to service the employer's customers, the employer did not establish that the claimant performed personal business on the employer's time or that he solicited customers for his personal business during work hours. The evidence does not establish that the claimant violated the employer's conflict of interest policy.

Based on the training from his previous supervisor, the claimant did not intentionally use the employer's vehicle for personal use. Even though Taylor only became the claimant's supervisor, he daily monitored the employees he supervised. Prior to May 7, he did not notice any problems or red flags with the claimant's work activity or times he reported. During the hearing the claimant explained what work he did the time while at his home and why he stopped at his personal business. Based on his explanations of these situations he did not commit work-connected misconduct.

The employer did not know the location of the unscheduled stops. Therefore, the evidence does not indicate if these outside the claimant's usual workday activity. The claimant's unscheduled stop on April 27 was at the employer's store where the claimant worked for over two hours.

The evidence establishes the claimant did not always accurately report his time. Sometimes this was due to problems with the computer in the claimant's truck. If the claimant did not accurately record his time, the facts do not establish that he intentionally or substantially misreported his time. Even though the claimant recorded that he took a break at the end of his day, if he had taken it during the day, he would have worked the same amount of time. On May 11, when the employer told him he had no hours for April 23 and 24, the claimant understood he needed to submit hours to get paid for these days. Neither the claimant nor the human resource representative knew or remembered he received or should have received short-term disability for these days. The claimant used poor judgment when he made up hours for April 23 and 24 after the human resource representative told him to submit hours for these two days. The facts again do not establish that the claimant committed work-connected misconduct by submitting hours for April 23 and 24.

Since the claimant's job was not in jeopardy before the employer learned he had opened his own business, the irregularities the employer discovered after the May 5 accident are either reasonably explained or the result of the claimant's poor judgment. The facts do not establish that the claimant did intentionally disregard the employer's interests or commit work-connected misconduct. As of July 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's July 31, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 1, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account his subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css