

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEREK W ERLEMEIER
Claimant

APPEAL NO. 13A-UI-13737-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREMER COUNTY AUDITOR
Employer

OC: 10/27/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 3, 2013, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on January 8, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, David Denison, attorney at law. Tim Neil participated in the hearing on behalf of the employer. Exhibits One, Two, A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time as the finance manager at Bremer County Community Based Services from July 2013 to October 30, 2013. He had previously worked part-time as a maintenance worker for the employer from April 2012 to July 2013. His supervisor in the finance manager position was the executive director, Jamie Barnett.

The employer discharged on October 30, 2013, because: (1) the county supervisors had received comments from member of the public questioning how the claimant could work for the employer and also worked as a custodian for Waverly-Shell Rock Community School District, (2) a guardian of person living in community based housing had complained that the claimant had not promptly deposited a rent check for October, and (3) the claimant had not followed an instruction given to him by the county supervisors not to attend county board of supervisors meeting unless there was an agenda item that pertained to him.

The claimant was allowed to work flexible hours as long as he worked 40 hours each week. Barnett was aware of the claimant's second job, reviewed the claimant's time sheet, and instructed him to report working his scheduled time in and out on his time sheet rather than the actual time worked.

The rent checks were due by October 6. The rent checks are handled by a clerk who would submit the checks to the claimant around the 11th of the month. The claimant then would post the checks as time allowed. There was a delay in processing some of the rent checks in October due to him preparing some financial reports.

The claimant had been told not to attend county board of supervisors meeting unless there was an agenda item that pertained to him. He attended the October 30 meeting in his supervisor's place.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 27, 2013. He filed weekly claim for two weeks and stopped filing claims after he was determined ineligible due to his employment with Waverly-Shell Rock Community School District in a decision dated November 19, 2013 (reference 01). He has not received any benefits.

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).

No willful and substantial misconduct has been proven in this case. The claimant's supervisor allowed him to work flexible hours and record his scheduled times of work rather than the exact times of work. The evidence does not show the claimant was paid for hours he did not work. The failure to deposit the rent check was due to the press of other business. Attending the meeting in his supervisor's place would be a legitimate reason for the claimant to be at the meeting on October 30.

The claimant remains ineligible due to the decision dated November 19, 2013 (reference 01), which he did not appeal.

DECISION:

The unemployment insurance decision dated December 3, 2013, reference 02, is affirmed. The claimant's separation from the employer was not for disqualifying reasons. The claimant remains ineligible due to the decision dated November 19, 2013 (reference 01).

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs