

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREGORY W TURNER**  
Claimant

**APPEAL NO. 09A-UI-08682-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**Original Claim: 02/22/09  
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 12, 2009, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 2, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Garrett Picklatt participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked as an order picker for the employer from March 12, 2008, to April 7, 2008. He was discharged because of an unacceptable number of errors in the orders that he picked. He received a warning for this on April 2, 2008, but he continued to make errors. When he received the warning on April 2, he was told that he would receive additional training, but that training was not given. The claimant never deliberately made errors in picking orders. He was challenged in doing the job because he was criticized by supervisors for making errors and by co-workers regarding his slowness in filling orders. At the point the claimant was discharged, he did not have the skills to do the job satisfactorily.

**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 (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 evidence is clear that the claimant's job deficiencies were not due to deliberate misconduct. The question is if his errors in picking products equal willful misconduct in culpability. I conclude they do not under the facts as found in this case. Conduct that rises to willful misconduct in culpability would involve a reckless disregard of the employer's interests or the claimant's job duties. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. At most, the evidence establishes unsatisfactory conduct due to lack of skills, which distinguishes this case from the cases (Green v. EAB, 426 N.W.2d 659 (Iowa Ct. App. 1988) & Gilliam v. Atlantic Bottling Co., 453 N.W.2d 230 (Iowa Ct. App. 1999)) cited by the employer's attorney.

**DECISION:**

The unemployment insurance decision dated June 12, 2009, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw