

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DONALD E KUYKENDALL**  
Claimant

**APPEAL NO: 13A-UI-07455-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 05/26/13  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's June 14, 2013 determination (reference 02) 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. Scott Miller, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 July 2012. He worked as a full-time delivery specialist. The employer's written policy informs employees they can only use the company vehicle for company business. Employees are not allowed to use the employer's vehicle to stop at a grocery store. The claimant understood he could not eat anything in the employer's vehicle.

On March 1, 2013, the claimant received his first and final written warning after he had an accident. The claimant made a delivery, but did not put the truck in park or pull the keys from ignition before he got out of the truck. After the claimant got out of the truck to make a delivery, the truck rolled into the building. When the claimant received the March 1, 2013 warning, he informed the employer he would follow company policy.

On May 28, 2013, the claimant's son asked him to pick up a flashlight at a dealership. The claimant told his son he could not go out of route to do this, but if a delivery was close by he would stop and pick up his flashlight. The claimant made a delivery that was close to where his son wanted the claimant to pick up a flashlight. After making a delivery, the claimant stopped to pick up the flashlight for his son. The claimant went out of the way a bit to get the flashlight.

The employer learned the claimant stopped at a business that he was not assigned to make a delivery to. The employer discharged the claimant on May 29 for stopping at place of business to conduct personal business.

**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 employer discharged the claimant for business reasons. The claimant violated the employer's policy when he stopped to pick up a flashlight after he made a delivery. Since the claimant had not been previously warned for stopping at a business for personal reasons and had only been involved in an accident, the evidence establishes he used poor judgment when he stopped to pick up a flashlight for his son. There were no previous problems of a similar nature. The facts do not establish that the claimant intentionally and substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct. As of May 26, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's June 14, 2013 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 26, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css