

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LUIS A CRESPO**  
Claimant

**APPEAL NO: 15A-UI-00758-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JENSEN BUILDERS LTD**  
Employer

**OC: 12/07/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 8, 2015 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the February 12, 2015 hearing. Tom Nelson, the director of human resources, appeared on the employer's behalf. Ike Rocha interpreted the hearing. 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 reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant to work as a full-time concrete laborer on October 23, 2014. After concrete had been poured at a job site on November 25, 2014, the claimant was cleaning tools. His supervisor left the work site for more than 15 minutes. When the supervisor returned, the claimant was sitting in his car. After cleaning tools the claimant went to his car to get some water. The claimant had been in his car less than five minutes when he supervisor returned.

The claimant's supervisor was upset when he saw the claimant in the car. He told the claimant to go to another area of the job site so he could help other employees clean more tools. The supervisor would not give the claimant a ride to other area and told the claimant to drive his own vehicle to that area.

The claimant drove his vehicle to the other area and parked next to the supervisor's vehicle. Employees were about 50 feet away from where the claimant parked. The claimant started walking to that area when the supervisor yelled at him and asked him why he was walking and had not driven his vehicle to that location. After the claimant told his supervisor that he did not believe his small car could make it the rest of the way, the supervisor fired him. The claimant

understood he was fired for not driving his car another 50 feet. Both the claimant and supervisor were yelling at the other person. Later that day, Nelson, decided the claimant, as a probationary employee, would be discharged because he had been insubordinate when he did not follow his supervisor's instructions and engaged in a shouting match with his supervisor.

### **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's supervisor did not testify at the hearing. The employer's reliance on hearsay information from the foreman cannot be given as much weight as the claimant's credible testimony. Since the claimant's testimony was somewhat different than the employer's, the credible evidence establishes the claimant followed his foreman's instructions and cleaned tools. The claimant's decision to park his vehicle 50 feet from where co-workers were cleaning more tools was not unreasonable.

The employer discharged the claimant, a probationary employee, for business reasons. The evidence does not establish that the claimant committed work-connected misconduct. Therefore, as of December 7, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

The employer is not one of the claimant's base period employer. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's January 8, 2015 determination (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of December 7, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs