

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

SHAUN A VINCENT
3700 – 28TH ST LOT 61
SIOUX CITY IA 51105

3MB INC
TONY ROMAS
460 – 16TH ST SE
LEMARS IA 51031

Appeal Number: 05A-UI-05713-SWT
OC: 05/01/05 R: 01
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 20, 2005, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was initially on June 15, 2005, but the hearing was reopened after it was determined that the claimant had called in and provided a telephone number for the hearing but the number was not recorded properly. The reopened hearing was held on June 16, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Ellis participated in the hearing on behalf of the employer with witnesses, Jenny Paulson and Mike Mouw.

FINDINGS OF FACT:

The claimant worked as a line cook for the employer from August 17, 2004 to April 29, 2005. He was initially not on the schedule to work on the April 28 through May 4, 2005, schedule

because an employee had told the restaurant manager that he was quitting. The claimant, however, had not told anyone in management that he was quitting. When he noticed that he had been removed from the schedule, he asked the restaurant manager why. The manager told him that an employee had said he was quitting. The claimant informed the manager that he did not intend to quit at that point and wanted to be put back on the schedule. He was put back on the schedule and worked through April 29. On April 29, the general manager, stated at a staff meeting that an employee who missed working without calling in would be terminated.

The claimant was scheduled to work on April 30, 2005. Even though he normally worked on Saturdays, he misread the schedule and thought he had been taken off the schedule on April 30. He, therefore, did not report to work or call in to report his absence on April 30, 2005.

When the claimant reported to work on his next scheduled day, which was May 2, 2005, the manager sent him home. The general manager later informed him that he was discharged for being absent without finding a replacement or calling the employer. There is no evidence that the claimant had ever missed work without finding a replacement or calling the employer before or that he had a poor attendance record.

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.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony that he misread the schedule is believable. While the claimant normally worked on Saturday, this was an unusual week because originally he had been removed from the schedule. There is no evidence that this was a recurrent problem or that the claimant had been disciplined about his attendance before.

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 in this case. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated May 20, 2005, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf