

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONTRELL M NEAL
Claimant

APPEAL NO: 12A-UI-02741-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TPI IOWA LLC
Employer

OC: 01/01/12
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 29, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with his wife, Amanda Neal. Danielle Williams, the human resource coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 June 2011. He worked as a full-time production employee. When the claimant started working, the employer gave him the employer's safe work policy. This policy informs employees they cannot harass or intimidate other employees at work. The policy also informs employees that violating this policy may result in the employee's termination.

In August 2011 the claimant received a written warning in part for not working as a team player and having problems accepting directions. The claimant had been upset with another co-worker, B., and did not want this co-worker to show or tell him what to do at work.

Sometime during the week of October 31, Leisha told Matt Keller that when S. was at the gun cleaning station with Amanda Neal, he had asked Amanda how to clean guns. About this time, Leisha reported that the claimant came to Leisha's work area and asked S. what he was doing with his wife. Leisha also reported that the claimant told S. to stay away from his wife.

A management employee talked to S. about Leisha's report. S. reported that once when the claimant left his work area and came to S.'s work area he had told S. that he if ever talked to Amanda again he would knock his ass out.

No one talked to Amanda about this reported incident. She denied this ever happened in her presence. The claimant also denied he made any statement like this. He does not know Leisha or S.

Based on Leisha's report and S.'s statement, the employer concluded the claimant violated the employer's safe work policy by threatening or intimidating S. The employer discharged the claimant on November 4. The employer told the claimant he was discharged because his employment was not working out.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer's witness did not have any personal information about the reasons for the claimant's employment separation. She relied on the reports of other employees. Neither Leisha nor S. testified at the hearing. The employer's reliance on hearsay information from employees who did not testify at the hearing cannot be given as much weight as the claimant's testimony and his witness's testimony. Based on the evidence presented during the hearing, the evidence does not establish that the claimant violated the employer's work safe policy the week of October 31, 2011.

Based on the claimant's August warning and the employer's early November investigation, the employer established justifiable business reasons for discharging the claimant. Since the evidence does not establish the claimant violated the employer's work safe policy the week of October 31, he did not commit a current act of work-connected misconduct. As of January 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's February 29, 2012 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but did not establish that the claimant committed a current act of work-connected misconduct. As of January 1, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs