

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PETER J EORIATTI**  
Claimant

**APPEAL NO. 09A-UI-09992-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPEE-DEE DELIVERY SERVICE INC**  
Employer

**OC: 05/31/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 6, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on July 28, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Jeff Cutler participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked part-time for the employer as a package handler from August 6, 2008, to June 4, 2009. He had been verbally warned in October 2008 about improving his attendance.

The employer discharged the claimant on June 4, 2009, for excessive absenteeism and tardiness after he reported to work two minutes after his scheduled time on June 3.

On June 2, 2009, the claimant approached his supervisor about getting additional hours. His supervisor told him that he needed to report to work on time before he would get additional hours.

The claimant's absences were all properly reported or approved and for legitimate reasons. When he was late, it was just one or two minutes. The claimant was not told that his employment was in jeopardy as a result of his reporting to work late. He did not receive any formal discipline about his attendance.

**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 employer has not met its burden of providing the claimant committed willful and substantial misconduct based on the facts in this case.

**DECISION:**

The unemployment insurance decision dated July 6, 2009, reference 01, is reversed. 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

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