

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN E SHIMEK
Claimant

APPEAL NO. 06A-UI-09858-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

OC: 08/27/06 R: 03
Claimant: (Respondent) (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Lynch Livestock, Inc. (employer) appealed a representative's September 29, 2006 decision (reference 02) that concluded Justin E. Shimek (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 23, 2006. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, 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 work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 22, 2005. The claimant worked as a full-time load-off manager. Chad Fox supervised the claimant.

The claimant knew he had problems managing his anger and went to anger control classes in 2005. Fox knew the claimant had gone to these classes. The claimant informed the employer that even though he had taken anger control classes and took medication if another person picked on him or egged him on, the claimant would get upset and become angry.

On August 28, Fox overheard the claimant talking to another employee about applying for another job with the employer. After Fox heard the claimant wanted another job, he appeared to make a point of telling the claimant everything he did wrong at his current job.

After dinner, a customer brought in some hogs. The claimant incorrectly recorded the number of butcher hogs the customer brought. The claimant should have recorded four butcher hogs, but only recorded two butcher hogs. When Fox brought this problem to the claimant's attention,

he yelled at the claimant. Even though the claimant acknowledged he had made this mistake, Fox then reprimanded the claimant for other problems the claimant had not done or been involved in. The two men yelled at one another for awhile. Finally, the claimant indicated he did not have to put up with Fox yelling at him. The claimant punched out to calm down. The claimant went home after he punched out.

The next day the claimant reported to work as usual. Initially, the employer told the claimant management was going to see if the claimant could work at the tire shop. Later, on August 29, the employer informed the claimant he no longer had a job. The employer did not have any job opening at the tire store. The employer did not give the claimant any reasons for his discharge.

Even prior to August 28, the claimant had problems working with Fox. While Fox had given the claimant verbal warnings about not paying attention to his work, the claimant had not received any written warnings. The claimant heard that Fox had "egged" him on the night of August 28 so the claimant would quit or Fox would have grounds to discharge the claimant.

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).

The evidence indicates the employer may have had business reasons for discharging the claimant. Since the employer attempted to transfer the claimant to another job, the facts do not establish that the claimant committed work-committed misconduct the evening of August 28. The claimant's conduct is not condoned, but an isolated hotheaded incident between the claimant and his supervisor does not rise to the level of work-connected misconduct. Therefore, as of August 27, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 29, 2006 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 27, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs