

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

DAVID A GALINDO
416 – 10TH ST NE
MASON CITY IA 50401

AADG INC
CURRIES-GRAHAM
PO BOX 1648
MASON CITY IA 50402 1648

Appeal Number: 05A-UI-11676-DWT
OC: 10/16/05 R: 02
Claimant: Appellant (2)

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:

David A. Galindo (claimant) appealed a representative's November 3, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Curries-Graham (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 2, 2005. The claimant participated in the hearing. Mark Evers, the director of human resources, and Brad Williams appeared on the employer's behalf. 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 disqualifying reasons?

FINDINGS OF FACT:

The claimant started working for the employer on October 20, 2000. The claimant worked as a full-time production employee. The employer's policy informs employees that if they receive four written warnings for various reasons within 12 months, the employer will discharge the employee.

Prior to October 20, 2005, the employer suspended the claimant. As a result of the suspension or the third written warning, the claimant understood his job was in jeopardy if he received another written warning within a 12-month time frame.

For the last six months the claimant has driven to work without a driver's license. The claimant did not realize that if a law enforcement officer arrested him for driving without a license, he could be put in jail.

On the claimant's way to work, around 2:15 p.m. on October 20, the claimant was arrested and put in jail. Prior to his 3:00 p.m. shift, the claimant notified the employer he was unable to work because he was in jail. The claimant was released the next day and reported to work as scheduled. The only other attendance related write-up the claimant received was in mid-May when he forgot to punch out for a break and then was late getting back to work from the break.

The employer's policy states that if an employee is unable to work because he is in jail, the employer considers this an unexcused absence, which means the employee receives a written warning. On October 6, the employer gave the claimant his fourth written warning in 12 months and discharged him pursuant to the employer's progressive disciplinary policy.

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 established business reasons for discharging the claimant. Pursuant to the employer's progressive disciplinary policy, the claimant accumulated too many write-ups for various reasons within a 12-month time frame. If the claimant's unexcused October 3 absence had only been his second or third write-up, the employer would not have discharged him.

The evidence shows the claimant properly notified the employer when he was unable to work as scheduled. The claimant did not intentionally fail to work as scheduled. While the claimant took a chance in driving when he did not have a license, he did not realize he could be arrested and put in jail if he was caught. While the claimant should have made other arrangements to get to work if he did not have a license, his failure to do so does not constitute work-connected misconduct. As of October 16, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 3, 2005 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of October 16, 2005, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s