

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFERY C STARBECK
Claimant

APPEAL NO: 14A-UI-07027-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAHR BEVERAGE INC
Employer

OC: 05/11/14
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 23, 2014 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account subject to charge because he had been discharged for disqualifying reasons. The claimant participated at the October 13 hearing in Waterloo, Iowa. Jane Fahr, the human resource director, appeared on the employer's behalf. During the hearing Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

In November 2013 the employer hired the claimant to work full time as the employer's premise manager. The claimant and a sales employee designated Friday, April 11, as a day to take some umbrellas the employer had in its warehouse to licensed premises. The umbrellas were used at outside beer gardens or patios. The umbrellas were identified by having the names of different beers, such as Samuel Adams.

About a month earlier, the claimant's brother asked if the claimant could give him an umbrella to use for shade on stage at the Sturgis Fall Festival. (Claimant Exhibit B.) On April 11 when the claimant picked up umbrellas to take to licensed premises, he found an umbrella that was broken, but clean. The umbrella had two supports broken. The claimant thought his brother could fix the supports and use the umbrella at the Sturgis Fall Festival. On April 11, the claimant and a sales employee, S.M., delivered umbrellas to various licensed premises. The claimant also took the broken umbrella to his brother's residence with the sales employee present.

On Monday, April 14, the sales employee, S.M., told a manager he no longer wanted to work with the claimant. S.M. had some issues with the claimant. S.M. also reported that the claimant

took one for the umbrellas the employer had in storage and left it at his brother's residence. The employer immediately started investigating S.M.'s reported concerns.

The employer reviewed the warehouse video that verified the claimant and S.M. took umbrellas from the warehouse and loaded them in a vehicle on April 11. The employer's GPS system verified the claimant and S.M. stopped at an unlicensed premise on April 11. The employer's GPS system identified the unlicensed premise stop as claimant's brother's residence. The employer did not know the claimant's brother is on the board of directors for the Sturgis Fall Festival. (Claimant Exhibit A.) The employer has a business connection with the Sturgis Fall Festival. In addition to leaving a broken umbrella at his brother's home, the claimant also left three sample bottles of beer for his brother to try and possibly recommend for the Sturgis Fall Festival. (Claimant Exhibit B.)

The employer requires employees to document inventory that is delivered to licensed premises and then document when inventory is picked up and returned from licensed premises. The claimant did not document that he took a broken umbrella to his brother.

May 9 was the first time the employer talked to the claimant about the umbrella he removed from the warehouse on April 11. Initially, the claimant denied he left any umbrella at a personal residence. After the employer gave him more details, the claimant admitted he had taken and left a broken umbrella for his brother to use at the Sturgis Fall Festival. The employer was surprised the claimant admitted he had done this. The employer then informed the claimant he was discharged for theft of an umbrella.

After the claimant was discharged, he picked up the umbrella he had left at his brother's home. The claimant's brother repaired the umbrella so it was functional. By late May, the claimant returned the umbrella to the employer.

The employer looked into other issues regarding the claimant, but the other issues were not the basis for the claimant's discharge. The employer did not explain what the other issues were because the employer discharged the claimant for theft of an umbrella.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or

3. 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 do not amount to 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 discharged the claimant for business reasons. The evidence does not establish that the claimant committed a current act of work-connected misconduct. This conclusion is reached for the following reasons. The claimant started working for the employer in November and April 11 was the first time he had delivered umbrellas to licensed premises. While he should have known he needed to document where all umbrellas were delivered, he also considered the umbrella as a public relation gesture to Sturgis Fall Festival that as the premise manager he had the discretion to do.

The fact the claimant delivered the umbrella to his brother is somewhat troublesome. But the claimant knew the warehouse had video cameras and he dropped off the umbrella when S.M. was with him. The claimant did not attempt to hide the fact he took a broken umbrella to his brother's home. He admitted he took the umbrella when the employer questioned him about a month later. The evidence does not establish that the claimant intentionally violated the employer's policies. Instead, he believed that giving his brother, a board member of the Sturgis Fall Festival, would help the business relationship between the employer and this event. The claimant did not follow the employer's procedures, but he did not intentionally or substantially disregard the employer's interests. He did commit work-connected misconduct.

Additionally, the employer did not discharge him for a current act of work-connected misconduct. Management received information on April 14 that the claimant took an umbrella to his brother's home. While it was important for the employer to investigate S.M.'s reported concerns, waiting almost a month before talking to and then discharging the claimant does not constitute a current act. The claimant is qualified to receive benefits as of May 11, 2014.

DECISION:

The representative's June 23, 2014 determination (reference 01) is reversed. The employer established business reasons for discharging the claimant, but the claimant did not commit a current act of work-connected misconduct. As of May 11, 2014, 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/css