

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN M PENDEGRAFT
Claimant

APPEAL NO: 08A-UI-02875-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMMUNICATION INNOVATORS INC
Employer

**OC: 02/24/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Steven M. Pendegraft (claimant) appealed a representative's March 17, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Communication Innovators, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 8, 2008. The claimant participated in the hearing. Jeff Dallas 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 20, 2005. He worked full time, normally 7:00 a.m. to 3:30 p.m., as an installer in the employer's voice and data structured cable service business. His last day of work was February 21, 2008. The employer discharged him on that date. The reason asserted for the discharge was turning in false information on a timecard and expense request.

The claimant was working on a job site in Creston, Iowa, about an hour and a half away from the Des Moines area in which the claimant lived. He was with another employee and they had been staying in a motel rather than commuting daily; he was eligible for \$22.00 per night for his overnight expenses. He would usually call in his time reports daily.

On the afternoon of February 19 the claimant got a call from his fiancée indicating that she could not pick up the claimant's child from daycare that evening. Therefore, when the claimant got off work he drove back to the Des Moines area to pick up his child. Another employee of the employer saw the claimant in the Des Moines area shortly after 4:30 p.m. On or about February 20 he called in his time report for February 19; he indicated working until 5:00 p.m. and that he had overnight expenses. As a result, the employer summoned the claimant on

February 21. The claimant did not deny that the daily time and expense report for February 19 was in error and he sought to amend them so that it reported only the actual drive time back, which he could have properly claimed, and not the overnight expense. He indicated that he had included both his drive time back to Des Moines and the overnight expense out of habit and due to submitting the report too hastily. However, the employer determined to discharge him due to the incident. There had not been any prior disciplinary issues with the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

Henry, supra.

The reason cited by the employer for discharging the claimant is his reporting both his drive time back to Des Moines, which may have also been reported inaccurately, and an overnight expense on his time report. Under the circumstances of this case, the claimant’s errors on his report was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative’s March 17, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs