

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J STALEY
Claimant

APPEAL NO: 13A-UI-10415-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLUE BEACON MANAGEMENT INC
Employer

OC: 08/11/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 3, 2013 determination (reference 01) that held the claimant qualified to receive benefits and held the employer's account subject to charge because the claimant had been discharged for reasons that did not constitute a current act of work-connected misconduct. Hearings were held on October 8 and 31. The claimant participated in both hearings. Amy Lewis represented the employer at the October 8 hearing and Todd Richardson represented the employer at the October 31 hearing. Trenton Willie, the general manager, participated at both hearing. Melissa Staley was present at the October 8, but did not participate at the October 31 hearing. At the October 31 hearing, Employer Exhibits One through Four 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 a current act of work-connected misconduct

FINDINGS OF FACT:

When the claimant completed his employment application on February 24, 2009, he indicated he had not been convicted of violating any laws other than minor traffic offenses. The February 24, 2009 employment application stated the claimant understood he could be discharged if he falsified any information on the application. (Employer Exhibit Four.) The employer hired the claimant as a bay attendant in February 2009.

In February and March 2008, the claimant was charged with misdemeanors and a felony. Even though the claimant pled guilty to a 5th degree theft misdemeanor and the other charges were dismissed (Employer Exhibit Three), his attorney told him none of the charges would show up on his record and he would not have to report them when he applied for jobs.

When the claimant was promoted to a supervisor in November 2011, he told Willie about the early 2008 charges. The employer called the claimant's mother and she verified that the

charges had been dismissed. The employer did not complete a background check in 2011 and promoted the claimant to a supervisor.

On June 11, 2013, the claimant completed another application so the employer would consider giving him a promotion. On this application, the claimant did not report any convictions. (Employer Exhibit One.) The claimant also signed an authorization to release information, which again advised him that any omissions or false statements on his application could result in his discharge. (Employer Exhibit Two.)

The claimant's background check came back on July 25, 2013. Willie learned about it a few days later. The employer gave the claimant an opportunity to find out why a conviction showed up on his background check for a 5th degree theft misdemeanor and was not noted as dismissed. The claimant went to the court house and tried to find out why this charge did not show up as dismissed. The attorney who represented the claimant in this matter is no longer in the Des Moines area and the claimant does not know how to contact her. By August 12, 2013, the claimant had been unable to get this charge on his record to show up as dismissed.

The employer discharged the claimant on August 12 because he had not reported the conviction for 5th degree theft on any employment application form.

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 Iowa Supreme Court has adopted a Minnesota court ruling that held before an employee can be disqualified from receiving benefits for misrepresenting information on an application

form, the misrepresentation must be “material” to the position sought. *Larson v. Employment Appeal Board*, 474 N.W. 2d 570 (Iowa 1991); *Heitman v. Cronstroms Mfg., Inc.*, 401 N.W.2d 425, 426 (Minn. App. 1987).

The facts establish that in 2011 the claimant informed the employer about the 2008 arrests and charges. The employer could have checked the claimant’s record at that time, but chose not to. Both the claimant and his mother understood that that all the charges were either dismissed or would be expunged from the claimant’s record so he did not have to report these charges to any potential employer. Based on the claimant’s understanding, he did not intentionally fail to report these previous charges.

In 2011, the claimant reported to the employer the problems he had in 2008. Since the employer knew in 2011 the claimant had been arrested on various charges, the employer discharged the claimant on August 12 for reasons that do not amount to a current act of work-connected misconduct. As of August 11, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative’s September 3, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant was discharged for reasons that do not amount to a current act of work-connected misconduct. As of August 11, 2013, 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