

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COURTNEY E REINHART
Claimant

APPEAL NO. 13A-UI-10270-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FISK FARM & HOME INC
Employer

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

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 5, 2013, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 3, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with her attorney, Eric Fern. Jeanelle Regan participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a cashier-store clerk from September 22, 2008, to August 16, 2013.

One of claimant's primary jobs was to use a touchpad handheld scanner gun for inventory purposes. On or about August 14, the claimant inadvertently scrolled down to the bottom of the scanners screen. She noticed for a first time that there was an icon labeled "Games" and "Solitaire" at the bottom. She was curious so she clicked on it to see what it was. A solitaire game opened up. She moved several cards in the game to see if it worked. She played for a minute or less and closed the application. She later told other employees about the solitaire game on the scanner, because it was unusual. Employees reported this to the store manager and said that the claimant was bragging about winning games on the device, which was not true.

When questioned by manager, the claimant admitted she had played solitaire on the device. The manager discharged the claimant for this on August 16. The employer has no policy covering this issue.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer has not met its burden of providing willful and substantial misconduct in this case. The claimant said she opened the game and made some card moves for a minute or less. The employer has not presented sufficient evidence to rebut this. The employees to whom the claimant talked were not called as witnesses.

DECISION:

The unemployment insurance decision dated September 5, 2013, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs