

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRET J LANSER
Claimant

APPEAL NO: 12A-UI-02326-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**OC: 01/01/12
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 29, 2012 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Travis Nemitz, an assistant store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2010. The claimant transferred to Nemitz's store in July 2011. The claimant worked as a full-time sales manager.

In early December an employee made a complaint against the claimant. The evidence does not indicate if the employer talked to the claimant about this complaint. The store manager talked to the claimant on December 10, 2011. At that time she reminded the claimant to be respectful at all times.

In mid-December, the claimant told an employee it was inappropriate for her to take a vacation during the holiday season when her sales were down. The employee's father called and complained to management about the claimant's comments to his daughter. About this same time, an employee who did not get along with the claimant reported that he intentionally knocked over some product and then told her to pick up the product from the floor. The claimant had accidentally knocked down product. After this employee refused two times to pick up the items as the claimant asked her to do, he reminded her that he could write her up for insubordination. This employee's job was already in jeopardy for attendance issues.

On December 26, 2011, the employer discharged the claimant for mistreating his co-workers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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).

The employer discharged the claimant for justifiable business reasons. Based on the evidence presented during the hearing, the claimant did not knowingly mistreat any co-worker. The facts do not establish that he committed work-connected misconduct. As of January 1, 2012, the claimant is qualified to receive benefits.

(Since the employer's witness had no first-hand knowledge about any complaint, the claimant's testimony as to what happened must be given more weight than the employer's reliance on unsupported hearsay information.)

DECISION:

The representative's February 29, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of January 1, 2012, 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/pjs