

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE R MILLER
Claimant

APPEAL NO. 08A-UI-03265-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

K MART CORP
Employer

**OC: 02/10/08 R: 04
Claimant: Respondent (1)**

Section 96.5-2- a- Discharge

STATEMENT OF THE CASE:

K-Mart Corporation (employer) appealed a representative's March 24, 2008 decision (reference 01) that concluded Jamie R. Miller (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2008. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 3, 2007. The employer hired him as an assistant manager. The claimant and his family moved to Dubuque, Iowa, when he accepted employment. As a result of the move, the claimant did not have the financial means to pay for travel the job required when he was in training. The employer gave the claimant a cash advance of \$750.00. When the claimant submitted bills for travel expense, motel rooms, etc. the employer reduced the amount of the cash advance. When the amount of the cash advance was reduced by the claimant's travel expenses, the employer gave him more advances so his expenses would be covered.

In August 2007, the claimant became the store manager. The claimant still traveled as part of his job duties. He continued to submit his travel expenses to reduce the amount of his cash advance or loan the employer had authorized.

In early December 2007, the claimant gave himself a \$200.00 cash advance to pay for a personal item. When the claimant's supervisor came to the store, the claimant had the receipt for the personal item with his other receipts. The claimant did nothing to hide the \$200.00 advance and his supervisor said nothing to him. About this same time, the employer noticed the claimant needed training on how to input information into the employer's accounting system.

The claimant also gave two other employees cash advances during his employment. The employer knew about one of the cash advances, but did not know about the second one. The employer did not indicate the claimant had done anything wrong when he gave himself a \$200.00 cash advance for a personal purchase or for granting a loan or cash advance to another employee.

As of February 12, 2008, the claimant had repaid all the cash advances the employer gave him in addition to the \$200.00 advance he gave himself. The other two employees had also paid off their cash advances. On February 12, 2008, the claimant's supervisor reluctantly discharged the claimant. The claimant understood he was discharged because it took him too long to pay back the cash advances.

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).

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).

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 may have had justifiable business reasons for discharging the claimant. The evidence does not, however, establish that claimant committed a current act of work-connected misconduct. Therefore, as of February 10, 2008, the claimant is qualified to receive benefits.

DECISION:

The representative's March 24, 2008 decision (reference 01) is affirmed. The employer discharged the claimant, but did not establish that the claimant committed a current of work-connected misconduct. As of February 10, 2008, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw