

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAY MCDANIEL
Claimant

APPEAL NO: 09A-UI-03269-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEIGHBORHOOD PATROL INC
Employer

OC: 01-25-09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 19, 2009, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 20, 2009. The claimant participated in the hearing with wife/witness Mary McDaniel and Attorney John Roehrick. David Lee, Operations Manager; Dick Rogerson, Director of Human Resources; Hamid Awan, Security Guard; and Karin Ziegler, Employer Attorney, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time security officer for Neighborhood Patrol Inc. from May 3, 2006 to January 21, 2009. On January 19, 2009, the employer received a complaint from a client that the claimant was on the premises during unscheduled work hours, not in uniform, interfering with the client's receptionist. He raised his voice and used profanity while complaining about the employer in general and his hours specifically. On January 21, 2009, the employer met with the claimant about the incident and he admitted to the allegations made by the client's witness and the employer terminated his employment for communicating or discussing "sensitive company information with unauthorized persons;" being "disorderly, insubordinate and displaying immoral or indecent conduct" when he used "obscene and/or abusive language" in the presence of a client; and made "untruthful or capricious statements about the company" and displayed "discourteous treatment" to fellow employees, members of the public and the client.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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 employer has the burden of proving disqualifying misconduct. 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 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). While the claimant's conduct was inappropriate and unprofessional, it was an isolated incident of misconduct. Although not condoning his behavior at the client's office, the administrative law judge must conclude that his actions do not rise to the level of disqualifying job misconduct as defined by Iowa law because it was a one-time event and the claimant had not been warned about anything, let alone similar behavior, in the past. Therefore, benefits are allowed.

DECISION:

The February 19, 2009, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css