

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL J SCHMIDT
Claimant

APPEAL NO. 12A-UI-03410-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TECHNISOURCE INC
Employer

**OC: 03/27/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 27, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 18, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Jennie Hove participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer on an assignment handling technical support calls at Wells Fargo from September 26, 2011, to February 9, 2012.

The claimant suffers from medical conditions that cause to have to urinate more frequently and with urgency. The claimant was in training on February 9 that started at 8 a.m. As part of the training, he was taking sample calls in a classroom. After a period of time, the claimant felt the need to urinate. He asked his instructor for a short break to go to the restroom, but instructor insisted that he stay at his station because the training was supposed to simulate the work setting. He asked two more times, but the instructor refused. When he could not hold it anymore, the claimant finished the call he was on, tossed his headset down on the desk, and quickly headed to the bathroom to relieve himself.

When he returned a few minutes later, a supervisor asked to meet with him in a conference room. The claimant explained what had happened and asked the supervisor what he was supposed to do, "piss on himself?" The claimant was escorted out of the building and was discharged for being disruptive in the classroom and using profanity.

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 (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).

No willful and substantial misconduct has been proven in this case. The claimant was placed in an untenable situation and did what he needed to do to prevent an embarrassing situation. I cannot conclude the use of the word "piss" in the context of what was happening to be a disqualifying use of profanity.

DECISION:

The unemployment insurance decision dated March 27, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs