

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BLAKE A MYERS

Claimant

APPEAL NO: 13A-UI-01748-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC

Employer

OC: 12/09/12

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Blake A. Myers (claimant) appealed a representative's February 4, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Jacobson Staffing Company, L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 13, 2013. The claimant participated in the hearing. Jeff Dotson appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on July 28, 2011. He worked full time as a tire moulder at the employer's Des Moines, Iowa business client. His last day of work was December 10, 2012. The employer discharged him on that date. The reason asserted for the discharge was leaving the property during his break.

The employer's policy specifies that "if you leave the building at any time you must punch out and punch back in when you return. In addition you must sign out at the guard shack when you leave and sign back in when you return." On December 6 the employer gave the claimant a written warning for having "left the center gate and failed to punch out or in at lunch." He was advised, "If you leave the property at anytime he was . . . to punch out and in, and to sign out and in at the guard shack."

The claimant's wife was about eight months pregnant, and on the morning of December 10 she was having bad contractions. Before the claimant even reported for work at 6:30 a.m. the claimant and his wife had called for an ambulance, which had come and gone before the claimant reported for work; his wife was still at home. There was not a phone in the facility that he could use to check on his wife, and the employer prohibited employees from bringing their cell phones into the facility. The claimant's first break was at 9:00 a.m., allowed for 15 minutes. Immediately at 9:00 a.m. he went out to the guard shack and signed out and went to his car in the parking lot which was about a two or three minute walk away, technically off the business client's property. He retrieved and used his cell phone to check on his wife, then returned to the facility, signing back in at the gate at 9:12 a.m. and returning to his work station. The employer's account manager became aware that the claimant had gone out to his car at the break, and discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his going out to his car technically off the business client's property while he was on break. While there was a technical infraction of the employer's policies, it was for an understandable reason. Under the circumstances of this case, the claimant's leaving the premises for the 12 minutes of his break to check on his wife's health was not substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or a good faith error in judgment

or discretion. *Newman*, supra. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 4, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs