

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY A MYERS

Claimant

APPEAL NO: 09A-UI-09919-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSTIY OF IOWA

Employer

OC: 06/07/09

Claimant: Respondent (2/R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's July 2, 2009 decision (reference 01) that concluded Jeremy A. Myers (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 July 28, 2009. The claimant participated in the hearing. Bill Searls and Nancy Kroeze appeared on the employer's behalf. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on January 14, 2008. He worked as a full-time security guard. As a night security guard, the claimant's job required him to make sure buildings were secure.

On May 19, 2009, during off-duty hours the claimant was arrested for harassment. On May 20, the employer gave him a written notice he would be suspended for three days as a result of his May 19 arrest.

On May 22, the claimant reported that everything was all right and normal at the Hillcrest dorm at 9:20 p.m., 11:55 p.m., 1:00 a.m. and 2:20 a.m. At 2:45 a.m., another employee saw a door at the Hillcrest dorm had been propped open. The employer concluded a vendor had done this while working on the dorm during the day. The vendor left at 5:00 p.m.

When the employer talked to the claimant about this, the claimant admitted he had not completed thorough checks during his May 22 shift. He had walked inside the dorm but he did not walk the outside perimeter of the dorm. The claimant acknowledged that if he had walked the outside perimeter, he would have discovered the door propped open.

The claimant was upset on May 22 because he thought about how the May 19 arrest would affect his career, he thought about his mother's declining health and about a relative who was recovering from a substance abuse problem. As a result of being upset and preoccupied with personal issues the claimant did not perform his job on May 22 as he had been trained to do.

On June 5, 2009, the employer discharged the claimant because of the claimant's failure to perform his job and for reporting a building was secure when it was not.

The claimant established a claim for benefits during the week of June 7, 2009. He filed for and has received benefits since June 7, 2009.

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).

Even though the claimant was preoccupied with personal issues on May 22, he knew he did not make perimeter checks four different times and still recorded that a building was secure when he did not with certainty know that it was secure. The fact the claimant failed to perform his job correctly four times shows an intentional disregard of the employer's interests. In this case the claimant substantially disregarded the standard of behavior the employer had a right to expect from him because he failed to notice a building was not secure and his job was to find this kind of problem. Under the facts of this case, the claimant's conduct on May 22 amounts to work-connected misconduct. Therefore, as of June 7, 2009, the claimant is not qualified to receive benefits.

Since the claimant has received benefits since June 7, the issue of overpayment will be remanded to the Claims Section to determine.

DECISION:

The representative's July 2, 2009 decision (reference 01) is reversed. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of June 7, 2009. This disqualification continues until he

has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The issue of overpayment or whether the claimant is eligible for a waiver of any overpayment is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css