

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLTON L GAGE
Claimant

APPEAL NO: 11A-UI-15811-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LYNCH LIVESTOCK INC
Employer

**OC: 05/15/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 1, 2011 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Lori Thompson, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2009. He worked full time in the yard.

During his employment, if the claimant found another employee to work in his place, this was not a problem. The claimant was not required to obtain permission from his supervisor to have someone work for him.

The claimant went to Wisconsin the weekend of October 22-23, 2011. He made arrangements with a co-worker, J.W., to work his shift on Sunday, October 23. J.W. planned to work for the claimant on October 23, but did not. None of the three employees scheduled on October 23 reported to work. On October 24, 2011, the claimant reported to work as scheduled. Even though the claimant told the employer he had made arrangements with J.W. to work for him on October 23, the employer gave the claimant a written warning for failing to call or report to work on October 23. The claimant signed the written warning without looking it over or reading it. He had signed about eight written warnings during his employment. The human resource manager then was K.A. He told the claimant he was suspended until November 3.

The claimant reported to work for his 3:00 p.m. shift on November 3. The employer then discharged him because the employer expected the claimant to report to work on November 1. When the claimant did not report to work or call on November 1 and 2, the employer discharged

him for unexcused absences. The written warning that is in the claimant's personnel file indicates K.A. wrote on the form that the claimant was to return to work on November 1.

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).

Since Thompson did not start working for the employer until early December 2011, she had to rely on written reports and documentation from other employees. The claimant's testimony is credible. Therefore, the facts establish that since the claimant made arrangements with J.W. to cover his shift on October 23, it was not necessary or required that the claimant contact the employer on October 23 to report he would not be at work. The claimant followed previous accepted procedures by making arrangements with J.W. to work for him. The employer had not required him to get permission for J.W. to work for him before.

The employer suspended the claimant on October 24 for failing to call or report to work on October 23. It is not known when K.A. wrote on the warning notice that the claimant was told to report to work on November 1. The claimant testified he was told to report back to work on November 3 at 3:00 p.m., which he did. Without someone with personal knowledge testifying at the hearing to refute the claimant's testimony, the credible evidence indicates the employer told the claimant to report back to work on November 3 not November 1. Based on this evidence, the employer may have had justifiable business reasons for discharging the claimant - the claimant had at least eight written warnings for various issues. The evidence does not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of October 30, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's December 1, 2011 determination (reference 03) is affirmed. The employer discharged the claimant, but the claimant did not commit a current act of work-connected

misconduct. As of October 30, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css