

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI P KAMARA
Claimant

APPEAL NO: 12A-UI-05189-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

**OC: 04/01/12
Claimant: Appellant (2)**

Iowa Code § 96.5(2) a- Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's May 3, 2012 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tom Kuiper, a TALX representative, appeared on the employer's behalf. Carol Mau, the executive director, and Teresa Tekolste, the human resource manager, testified on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant stated working for the employer in October 2011. He worked as a full-time direct support associate. The claimant usually worked the 3:00 to 11:00 p.m. shift.

The claimant understood the employer did not allow employees to conduct personal business when they were working and had a client. In November 2011, the claimant received a copy of the employer's Code of Conduct. (Employer Exhibit Three.) Many subjects were discussed during a November 21 session. The claimant has not gone through and read the employer's code of conduct policy.

The claimant applied to work for another employer because he needed a part-time job for financial reasons. The claimant applied to work at Homestead. He was hired to work at Homestead.

On March 13, 2012, the claimant agreed to work a 7:00 a.m. to 3:00 p.m. shift for another employee. Homestead asked the claimant to pick up a schedule and some paperwork that he needed to returned. When the claimant agreed to work for another employee on March 13, part of his job included picking up a client and taking him to a doctor's appointment. This client lived

five to ten minutes from the Homestead office. The claimant went to the Homestead office after he picked up the client. He brought the client into Homestead's office. When the claimant told a Homestead employee he was there to pick up some paperwork, she told him he was scheduled for orientation. The claimant indicated he could not stay and the orientation would have to be rescheduled. While the claimant talked to Homestead personnel, other Homestead employees learned the claimant had brought the client into Homestead's lobby and left the client unsupervised.

Homestead's executive director immediately sent Mau an email telling her about this incident that occurred around 9 a.m. (Employer Exhibit Two.) The employer discharged the claimant on March 13 for concluding personal business while he was working and left a client unsupervised. (Employer Exhibit One.)

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).

Based on information from Homestead's executive director, the employer established justifiable business reasons for discharging the claimant. Since Homestead's executive director did not testify, it is not known if he relied on information from other Homestead employees or personally knew the claimant was scheduled to attend a new employee's orientation on March 13. The claimant's testimony is credible. The fact the client had a doctor's appointment the claimant was scheduled to take him to supports the claimant's testimony that he planned to pick up some paperwork and leave. The evidence does not establish that the claimant knew or understood Homestead had scheduled him for a four to six hour orientation.

Even though the claimant only planned to pick up some paperwork and leave does not mean this conduct is condoned. The claimant used poor judgment when he decided to stop at Homestead for a few minutes to pick up some paperwork when he had a client with him. The claimant showed a lack of judgment, but he did not intentionally disregard the employer's interests or the client that was in his care. On March 13 the claimant showed poor judgment but he did not commit work-connected misconduct. As of April 1, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's May 3, 2012 determination (reference 01) is reversed. The employer discharged the claimant for justifiable business reasons, but the March 13 incident does not rise to the level of work-connected misconduct. As of April 1, 2012, the claimant is qualified to receive benefits, provided he meets all to eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css