

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH M THEIN**

Claimant

**APPEAL NO: 10A-UI-02402-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IO CORP / PRONTO STORE**

Employer

**OC: 01/03/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

IO Corporation / Pronto Store (employer) appealed a representative's February 5, 2010 decision (reference 01) that concluded Joseph M. Thein (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, 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?

**FINDINGS OF FACT:**

The claimant started working for the employer on December 9, 2008. Since about February 2009, he worked full time as a shift manager at the employer's Manchester, Iowa convenience store. His last day of work was January 1, 2010. The employer discharged him on that date. The reason asserted for the discharge was potentially costing the employer money due to two incidents.

On the evening of December 25, 2009, two teenage girls came into the store; they indicated that their grandfather had slipped on some ice outside the store. They said that he was fine but that the store employees should go put some more salt on the pavement outside the store. As the claimant was getting ready to go outside, the man's wife came in and also yelled at the store employees about putting out more salt. The claimant finished his preparation and went outside, but by then the party had driven away from the store. The claimant and the other employee who were working were later verbally reprimanded for not offering medical assistance, not getting the contact information, and for a "wisecrack" the other employee made to the girls about not suing the business because it was Christmas.

On December 30 or December 31 the claimant surveyed local gas prices as was his responsibility before reporting for work at 2:00 p.m.; one local gas station prices had gone up \$.03. When he arrived at the store, he was prevented from immediately faxing in this report to the employer's corporate office because there was a regional manager in the store and he had some tasks he wanted the claimant to do right away, which he did. However, when he was done with those tasks he then forgot that he had not faxed in his price change report. Because of this after the incident on December 25, the employer determined to discharge the claimant. The only prior warning given to the claimant was the verbal warning regarding the Christmas incident; he was not advised that his job was in jeopardy should there be any further problem.

### **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 the incident on Christmas and the failure to fax in the price change report on December 30 or December 31. Under the circumstances of this case, the claimant's actions were at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence, or due to good faith errors in judgment or discretion. 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 5, 2010 decision (reference 01) is affirmed. 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs