

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

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**Appeal Number: 04A-UI-11050-SW  
OC: 09/12/04 R: 02  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 4, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A hearing was held on November 15, 2004, in Des Moines, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, John Hemminger. Dave Duede participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a universal worker from September 16, 2003, to August 23, 2004. The claimant suffered a muscle strain in the abdominal area on the job on August 23, 2004.

On August 24, the claimant was off work because the claimant's wife was having a cesarean section. When he left the hospital after his child was born, he was involved in a minor car accident that caused minor damage to his car but no personal injury to the claimant.

The claimant went to the doctor regarding his abdominal injury later on August 24 and was initially diagnosed with a probable hernia. The doctor took him off work due to this injury until a specialist could examine him.

Later that week, the claimant met with his supervisor, Dave Duede, about his work-related injury and told Duede that he had been taken off work. Duede told the claimant that his workers' compensation claim would be expensive for the company and would affect employee bonuses. He said the company would appreciate it if the claimant took the injury through his health insurance and the temporary disability program instead of filing a workers' compensation claim. The claimant would not agree to this. Duede then asked the claimant if anything else happened around the time of the injury because he had seen the claimant's car. The claimant told Duede about the accident.

Duede reported the car accident to the workers' compensation adjuster as a possible cause of his injury. On September 17, 2004, the claimant called the adjuster to find out the status of the workers' compensation claim. The adjuster told the claimant that she needed the police report regarding the accident before making a determination on his claim. The adjuster told the claimant that the employer had expressed concern based on the damage to his vehicle that he had injured himself in the car accident rather than at work.

The claimant was upset by what appeared was an attempt by Duede to block his workers' compensation claim. He called Duede and asked why he had told the adjuster that he had been injured in the car accident. Duede denied telling the adjuster that he was injured in the accident. They argued back and forth, and the claimant hung up because the conversation did not seem to be going anywhere. The claimant was angry when he spoke to Duede but did not direct profanity toward Duede during the conversation. Later that day, Duede spoke with the claimant on phone again and told him that he was fired. Duede discharged the claimant for insubordination based on the conversation he had with the claimant on September 17, 2004.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony was consistent and more credible than Duede's testimony. While under cross-examination, Duede denied saying anything to the claimant about using his health insurance and temporary disability instead of filing a workers' compensation claim but admitted that his secretary might of made that suggestion. Then, while questioning the claimant, Duede asked him if it was possible that he misunderstood Duede when Duede was explaining his option to file for temporary disability. This is inconsistent and undercuts Duede's testimony that the claimant directed profanity toward him.

The claimant acknowledged arguing with Duede, but this standing alone is not enough to prove willful and substantial misconduct. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated October 4, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/smc