

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARREN C WARE
Claimant

APPEAL NO: 07A-UI-10721-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC
Employer

**OC: 10/14/07 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Darren C. Ware (claimant) appealed a representative's November 16, 2007 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Millard Refrigerated Services, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 5, 2007. The claimant participated in the hearing. The employer responded to the hearing notice, but the employer's witness was not available for the hearing. A message was left for the witness to contact the Appeals Section immediately. The employer did not contact the Appeals Section again. 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:

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

FINDINGS OF FACT:

The claimant started working for the employer on July 1, 2005. The claimant worked as a full-time assistant lead. The claimant understood an employee could be discharged if the employee accumulated ten attendance points in a rolling year.

Prior to October 8, 2007, the claimant's job was not in jeopardy. While the claimant was driving in Missouri, a law enforcement officer stopped him. The law enforcement officer arrested the claimant and put him in jail until October 10. The claimant was scheduled to work on October 8. He could not call or report to work on October 8. In accordance with the employer's policy, the claimant received three attendance points for this absence. The claimant received three attendance points for his October 9 absence also. On October 10, the claimant was released from jail and immediately called the employer to report he would be work at that night, but would be late. The claimant understood he would be allowed to work. The claimant reported to work five hours late or at 8:30 p.m. Although the claimant was scheduled to work until 2:30 or

3:30 a.m., the employer told him to punch out and go home. The claimant expected to receive 1.5 points for reporting to work late on October 10.

A few days later, the employer discharged the claimant. The employer told the claimant he had violated the employer's attendance policy because he had one attendance point before October 8 and was assessed three points on October 10, the day he reported to work late.

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 section 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).

The employer may have had business reasons for discharging the claimant, but the claimant did not violate the employer's attendance policy. The evidence indicates the claimant should have been assessed 1.5 points, not 3 for reporting to work late on October 10, 2007. Also, the facts establish that as soon as the claimant had access to a phone, he called the employer on October 10. The claimant did not intentionally fail to work as scheduled on October 8, 9 and 10. After the claimant was released from jail, he went to work as soon as he could get to work. Under the facts of this case, the claimant did not commit work-connected misconduct. As of October 14, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's November 16, 2007 decision (reference 02) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

October 14, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs