

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

ADAM P PETERSON
120 SUNSET LN
ELK RUN HEIGHTS IA 50707

CARE INITIATIVES
c/o JOHNSON & ASSOCIATES
PO BOX 6007
OMAHA NE 68106-6007

Appeal Number: 05A-UI-02779 -SWT
OC: 02/06/05 R: 03
Claimant: Appellant (2)

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 7, 2005, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 7, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Suzanna Ettrich participated in the hearing on behalf of the employer with a witness, Robert High.

FINDINGS OF FACT:

The claimant worked full time for the employer from September 26, 2000 to February 8, 2005. He started working as an environmental services supervisor and was promoted to the position of human resource director on October 1, 2001. The claimant's supervisor was the administrator, Robert High. The claimant understood that he was responsible for making sure that employees had background checks completed before they started working.

In December 2004, a state survey was done in the facility. The state inspector informed the facility that a new background check should have been done on an employee who was hired but did not start work until more than 30 days after being hired. This was not cited as a deficiency and the claimant was not disciplined regarding the situation.

At the end of January 2005, the person had applied for a dietary aide position. A background check was done that disclosed a "Possible dependent abuse" finding. The claimant was supposed to follow up on this to confirm or deny this finding. He neglected to do this because he normally was involved in the job interviews but the dietary manager did the interview. Immediately after the person started working, the claimant discovered his mistake and followed up on possible abuse finding. The follow up check came back that the possible abuse was denied. The state came into the facility in early February to investigate a complaint of possible abuse and discovered that the employer had hired someone without completing the required background check. On February 7, 2005, the state cited the facility for this discrepancy and fined the facility \$100.00.

The claimant was discharged on February 8, 2005, for allowing an employee to start work before the completion the required background check. This was not the result of any deliberate conduct by the claimant, but instead was negligence.

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).

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. This was an isolated instance of negligence that does not meet the definition of work-connected misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated March 7, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/sc