

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAT E ROE
Claimant

APPEAL NO. 06A-UI-10884-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOSSARD INDUSTRIAL PRODUCTS
Employer

OC: 10/15/06 R: 03
Claimant: Appellant (2)

Section 96.5-2 - Discharge

STATEMENT OF THE CASE:

Pat E. Roe (claimant) appealed a representative's November 7, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Bossard Industrial Products (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 28, 2006. The claimant participated in the hearing with his witness, Joanne Roe. Lynn Carter, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 14, 2006. The employer hired the claimant to work as a full-time laborer. The claimant's last day of work was September 25, 2006. The claimant was arrested on September 25, 2006.

The claimant's wife, Joanne, contacted the employer on September 26 and talked to the claimant's supervisor. Joanne told the employer about the claimant's arrest and that he was in jail. Joanne called the employer every other day the week of September 25 to let the employer know that the claimant was still in jail. The next week, she again notified the employer to report that the claimant was in jail. At that time, the claimant did not know when he would be released. The claimant was waiting for a bond reduction hearing so he could post a reduced bond to get out of jail. The claimant's supervisor told Joanne she did not need to contact him every other day, and the claimant just needed to let the employer know when he was able to return to work.

The claimant had no idea his job was in jeopardy. When the claimant had not been released by October 6 and he had no idea when he would be released, the employer ended his employment. The employer needed someone to work in the claimant's position.

The claimant was released from jail on October 14, 2006. The claimant could have bonded out earlier if he had known his job was in jeopardy. On October 15, 2006, the claimant contacted the employer and learned he no longer had a job. The claimant's supervisor told the claimant he could not return to work. The employer explained that the claimant had been gone from work a long time and if the employer allowed the claimant to return to work, other employees would expect the same consideration.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his employment. Even though the claimant was in jail, the claimant could have posted bond prior to October 14 if he had known his job was in jeopardy. The employer terminated the claimant's employment because the employer had no idea when the claimant would be released from jail and could return to work.

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 discharged the claimant because he was unable to work when he was in jail. The employer needed someone in the claimant's job position and the employer had no idea when the claimant could return to work. Under these facts, the employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 15, 2006, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's November 7, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of October 15, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw