

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERRY D BLAINE
Claimant

APPEAL NO. 07A-UI-09480-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE LANDS OF AMERICA INC
Employer

**OC: 09/02/07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Jerry D. Blaine (claimant) appealed a representative's October 5, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Adventure Lands of America, 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 October 23, 2007. The claimant participated in the hearing. Brandon Geier, the ride operator supervisor, 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in April 2007. The claimant understood he was hired as a seasonal employee. The employer's season ended September 30, 2007. During the employer's busy season, the claimant worked as a full-time ride operator.

Toward the end of the claimant's employment, he only worked weekends because the employer's business closed during the week days and was only open during the weekend. On August 31, Geier contacted the claimant and asked if he would work a double shift on Saturday, September 1. The claimant indicated he would.

That Friday night, August 31, the claimant went out to eat. By early Saturday morning the claimant became very ill. He was nauseous and vomiting. The claimant remembered calling the employer to report he was ill and unable to work that morning. The claimant did not know if he would be able to work the afternoon shift. The next day, September 2, the claimant was scheduled to work one shift. The claimant was too ill to get out of bed and he did not contact the employer to report he was unable to work.

On September 7, the claimant went to work to find out when he was scheduled to work that weekend. The claimant then learned he no longer had a job. The employer told him to return his uniforms. The employer did not tell the claimant why he no longer had a job.

Geier had no knowledge the claimant had called Saturday morning to report he was ill and unable to work. As far as Geier knew the claimant did not contact the employer on Saturday or Sunday. When the claimant did not call or report to work for three consecutive shifts, the employer ended the claimant's employment. Prior to September 1, there was one day the claimant had not reported to work as scheduled. This day he had a flat tire. Prior to September 1, the claimant's job was not in jeopardy.

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).

Prior to September 1, the claimant's job was not in jeopardy. The employer's business had already slowed down and the employer reduced the hours of operation to weekends. While Geier did not know the claimant had called in on Saturday, the evidence does not contradict the claimant's testimony that he was ill and unable to work on September 1 and 2. Since the claimant did not have an attendance problem, there is no reason to question the claimant's credibility. Given the fact the claimant was ill and unable to work and the employer's season ended on September 30, the facts do not establish that the claimant intentionally or substantially disregarded the employer's interests or committed work-connected misconduct. As of September 2, 2007, 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 October 5, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 2, 2007, 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/pjs