

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENJAMIN KAMM

Claimant

APPEAL NO. 07A-UI-09781-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION

Employer

**OC: 09-16-07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 15, 2007, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 5, 2007. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Pamela Pope, Lead EEO Representative; Brian Martin, Team Leader; Brian Kay, Coach; and Steve Zaks, Employer Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time center sales and service associate for Qwest Corporation from September 25, 2006 to September 19, 2007. On May 11, 2007, the employer learned that a former employee's ex-husband was alleging the claimant and another man vandalized two of his vehicles at his residence (Employer's Exhibit One). The employer interviewed the claimant who denied any involvement in the incident. On May 21, 2007, the claimant called the employer and said he threw a rock at one of the vehicles and consequently the employer left the investigation open and told the claimant to inform it if formal charges were filed. On September 12, 2007, the employer was notified of an article in the Sioux City Journal stating the claimant was charged with second degree criminal mischief. On September 13, 2007, the employer re-interviewed the claimant and asked him why he did not report the charges and the claimant indicated he did not think to inform the employer. The employer accessed the claimant's court records and learned a warrant was issued and served for his arrest August 10, 2007, but the claimant did not advise the employer of that development or his arrest and the employer terminated his employment September 19, 2007, for impeding an investigation and for violating its policy against lying, misrepresenting the facts, or failing to disclose facts, during an investigation (Employer's Exhibit Two and Three).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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 claimant's alleged vandalism was clearly non-work-related in that it took place off company premises and during the claimant's off-duty time and did not involve any other current Qwest employees. The issue then becomes whether his off-duty conduct and response to the employer's investigation constitutes disqualifying job misconduct. If the employer had not questioned him about the non-work-related issue the claimant would not have been placed in the position of possibly incriminating himself or being less than truthful with the employer about the situation and impeding the employer's investigation of the non-work-related incident. While the employer does have a policy covering non-work-related conduct, the claimant's actions did not involve

violence, dishonesty or theft or jeopardize workplace safety or security, Qwest's image or his ability to carry out his duties. Therefore, the administrative law judge must conclude that the claimant's conduct does not rise to the level of disqualifying job misconduct as defined by Iowa law. Benefits are allowed.

DECISION:

The October 15, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css