

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAD J RITTGERS
Claimant

APPEAL NO: 11A-UI-11386-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURKE MARKETING CORPORATION
Employer

OC: 07/1711
Claimant: Appellant (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 18, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Terry Ubben and Tim Fowler appeared on the employer's behalf. During the hearing, Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time third shift sanitation employee in June 2010. The claimant's third shift ended at 7 a.m. The claimant's job was not in jeopardy prior to July 19, 2011.

The employer received a report from a first-shift employee on July 8, 2011, that sometime between 6:15 a.m. when he reported for work, and his first break, around 9:30 a.m., someone had tried to pry open his locker. The employer examined the locker and noticed the locker door was bent, but had not been opened.

On July 11, another first-shift employee reported that between the time he reported to work at 6:15 a.m. and the first break, someone had actually broken into his locker and took \$8. The employer checked all the lockers and discovered that someone had either pried open or tries to pry open 15-20 lockers. These lockers suffered varying degrees of damage. The employer then had Quality Control personnel open and inspect all the lockers in the locker room. The employer was able to repair ten lockers and ordered parts to repair the other damaged lockers.

When Quality Control personnel opened up the lockers, the employer found a long handled screw driver in locker 140. Locker 140 was the claimant's locker. The blade of the screwdriver

had paint chips on it that matched the color of the damaged lockers. The employer concluded the markings on the damaged lockers matched the width of the screwdriver blade. The employer removed the screwdriver from the claimant's locker to see if he reported it missing. (Employer Exhibit Six.) The employer put up a sign in the locker room advising employees that someone had been trying to pry open lockers.

The claimant did not report any missing tools from his locker. On July 19, the employer talked to the claimant. The claimant reported that he picks up tools from the R & D and picked up that screwdriver. The claimant suggested that the red stain on the blade of the screwdriver found in his locker was from the floor. The employer discounted this theory because the colors on the floor are different than the lockers. The employer suspended the claimant without pay in July 19.

On July 21, the employer planned to discharge the claimant. When the claimant asked to speak to the owner, the employer did not discharge him on July 21. (Employer Exhibit Three.) The claimant met with the owner on July 22 and presented information to him. Burke agreed to discharge the claimant. On July 25, employer discharged the claimant for damaging the employer's property, prying open or trying to pry open other employees' lockers July 8 through 11. (Employer Exhibit Four.)

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 § 96.5(2)a. 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 question in this case is whether the employer established by a preponderance of the evidence that the claimant damaged employees' lockers. The claimant denies he damaged any locker and asserted a number of employees could have done this. The employer presented evidence that the claimant had an opportunity to damage the lockers because he was not done with his shift until first shift employees started working. The employer found a screwdriver in the claimant's locker that had paint chips on it that were the same color as the damaged lockers. The claimant has not given his locker number to another employee. The blade of the screwdriver found in the claimant's locker matched the damage done on the lockers. The claimant admitted he picked up the screwdriver before July 8. Even though the employer did not have anyone identifying the claimant as the person who damaged and broke into lockers, the employer's evidence points to the claimant. The claimant's denial that he damaged lockers without any evidence supporting his denial is not as persuasive as the employer's evidence. Based primarily on the fact the employer found a screwdriver in the claimant's locker that had paint chips the color of the lockers and the blade matched the markings on the lockers, the employer established by a preponderance of the evidence that the claimant damaged the lockers. The employer discharged the claimant for substantially disregarding the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct. As of July 17, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's August 18, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of July 17, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw