

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL P PECK**  
Claimant

**APPEAL NO. 09A-UI-06037-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST BUY STORES LP**  
Employer

**OC: 03/27/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 8, 2009, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2009. Claimant participated personally. Employer participated by Ashley Bock, Operations Manager and was represented by Tanis Burrell. Exhibit One. Pages 1—6, was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 19, 2009.

Claimant was discharged on March 7, 2009 by employer because the claimant was alleged to have violated company policies on using employee's discount. On February 1, 2009 the claimant purchased a TV, TV stand and four-year service agreement using his employee discount. The claimant had his father use his credit card for the purchase as the claimant's credit card was "maxed out." The purchase was for the claimant and the claimant's responsibility.

**REASONING AND CONCLUSIONS OF 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.

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).

The evidence shows that the claimant had his father use his credit card so the claimant could purchase the merchandise and service agreement. The sale, while in his father's name, was for the claimant and it was for his use and the claimant is liable for the cost of the purchase to his father. The fact that the claimant had his father use his credit card to purchase the items when the claimant was still responsible for payment does not appear to violate policy. The claimant purchased the items through a loan from his father. The employer has failed to prove that the claimant deliberately violated store policy.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant was alleged to have violated employer's policy concerning employee discounts.

**DECISION:**

The decision of the representative dated April 8, 2009, reference 01, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs