

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOMMY D BURNER
Claimant

APPEAL NO. 06A-UI-09406-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREGORY MFG CO
Employer

**OC: 08/20/06 R: 04
Claimant: Appellant (2)**

Section 96.5-2- a - Discharge

STATEMENT OF THE CASE:

Tommy D. Burner (claimant) appealed a representative's September 14, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Gregory Manufacturing Company (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 9, 2006. The claimant participated in the hearing. Louis Worden, the human resource manager, and Donna Dobson appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. 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 on December 19, 2005. The claimant worked as a full-time painter. Prior to August 19, 2006, the claimant's job was not in jeopardy.

After getting done with work the morning of August 19, the claimant went with another employee to the break room to get a pop. The claimant tried to get pop out of the vending machine, but was not successful. After the vending machine took the claimant's money without giving him a pop and keeping his money, the claimant kicked the machine. This time kicking the machine did not result in the claimant getting back his money. The claimant knew the employer had a camera in the break room and everything he did was recorded. (Employer Exhibit One.)

On August 21, 2006, the employer discharged the claimant. The employer discharged the claimant because he intentionally damaged property (the pop machine) at the employer's business. The business that owns the pop machine has not requested any money for the damaged plastic on the front of the machine.

Before the employer discharged the claimant, the employer reviewed the recording of the August 19 incident. The employer received information from an employee he had seen the pop machine on August 18 around 4:00 p.m. At that time the employee reported the pop machine was in good working order. When the employee came to work the next day, the front of the machine was broken. (The plastic on the front of the machine was cracked.) The employer did not talk to the employees who were in the break room the same time as the claimant. The claimant and several employees indicated the plastic on the front was cracked before the claimant kicked the pop machine.

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. 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 claimant admitted he kicked the pop machine the morning of August 19, 2006. The issue that is in dispute is whether the plastic on the front of the pop machine was cracked before the claimant kicked the machine. Employer's Exhibit One does not indicate if the plastic on the front of the pop machine was cracked before or after the claimant kicked the machine. It is possible the claimant kicked the machine hard enough for the plastic to crack. However, it is also possible that the plastic was cracked before the claimant kicked the machine. It is also possible that the crack in the plastic became more pronounced or was bigger after the claimant kicked the machine. A review of Employer's Exhibit One, indicates that neither the claimant nor the other employee reacted in a way that indicates the claimant's conduct damaged the pop machine. Both the claimant and employer relied on statements from employees who did not testify at the hearing. As a result, these statements cannot be given very much weight. The only person who testified who was present the morning of August 19 was the claimant. His testimony is credible and must be given more weight than the employer's reliance on hearsay information from an employee who did not testify at the hearing. The claimant's testimony in addition to claimant's reaction after he kicked the pop machine does not establish that the claimant initially or even significantly damaged the pop machine the morning of August 19.

Without knowing the status of the pop machine before the claimant kicked it, the evidence does not establish that the claimant intentionally damaged the pop machine owned by a vending company. The evidence establishes that the employer had business reasons for discharging the claimant. The employer's reasons for discharging the claimant do not constitute

work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's September 14, 2006 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 20, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs