

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TORIN J WHITE-GREEN**  
Claimant

**APPEAL NO: 13A-UI-11427-DW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OPTIMAE LIFESERVICES INC**  
Employer

**OC: 08/18/13**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's October 2, 2013 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 at the December 2, 2013 in-person hearing. The employer did not appear for the hearing or request a postponement. Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant stated working for the employer in August 2012. The claimant worked as a full-time direct support care specialist. Prior to early March 2013, the claimant's job was not in jeopardy.

When the claimant's third shift hours changed to 9:00 p.m. to 7:00 a.m., he talked to his supervisor. The claimant was responsible for picking up his brother from work at 9:30 p.m. and then taking him home. Since the clients at the house where the claimant worked could be alone, the claimant's supervisor gave him permission to leave the house during his shift to pick up his brother if the clients were asleep. The claimant would be gone about 45 minutes.

The last night the claimant worked, he left the house around 9:30 p.m. after he checked to make sure everyone was asleep. After the claimant had dropped off his brother and was on his way back to work, a supervisor called him to find out where he was at. A client had gotten up when the claimant was gone. The client called the employer because no one was at the home. The claimant told the supervisor he was on his way back to the house.

When the claimant arrived at the house, a police car was outside, but he did not talk to the police. His supervisor's supervisor also called him and asked him where he had been. The claimant told her. The claimant learned a client had gotten up because he had been thirsty and

was worried that the claimant was not at the home. After the claimant reassured the client that everything was all right, the client went back to bed. The claimant worked his shift or until 7:00 a.m.

On March 4, the employer discharged him because he had left work to pick up his brother. The claimant understood the employer thought he would have a "mark" against him so he would not be allowed to work for the employer. When nothing happened to the claimant, the employer talked to the claimant in mid or late March about returning to work, but the employer did not have a night shift position available any longer.

### **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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer may have had business reasons for discharging the claimant. Since the claimant had permission to leave work to pick up his brother and the clients could be left alone, the claimant did not commit work-connected misconduct. As of August 18, 2013, the claimant is qualified to receive benefits.

**DECISION:**

The representative's October 2, 2013 determination (reference 01) is reversed. The employer discharged the claimant, but the evidence does not establish that the claimant committed work-connected misconduct. As of August 18, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css