

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS J SMITH
Claimant

APPEAL NO: 06A-UI-11453-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY BUILDERS SUPPLY INC
Employer

OC: 12/25/05 R: 04
Claimant: Respondent (1)

871 IAC 24.1(113) - Layoff

STATEMENT OF THE CASE:

West Liberty Builders Supply, Inc. (employer) appealed a representative's November 22, 2006 decision (reference 02) that concluded Thomas J. Smith (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 14, 2006. The claimant participated in the hearing. Terry Ruess, the owner, appeared on the employer's behalf. 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant has worked at various times for the employer. Most recently, the employer rehired the claimant the week of September 11, 2006. The claimant does not drive and rode to work with another employee, Bryan Smith. During his employment, the claimant was absent some days. A couple of the days the claimant did not work for the employer, he helped his father with some work. Other days the employer sent the claimant home because weather prevented the employer from working. The employer did not give the claimant any warnings that his job was in jeopardy for attendance issues.

On October 20, 2006, when the claimant reported to work, the foreman sent him home and told the claimant he was not needed that day. When the claimant called the next week the employer still did not have any work for the claimant. The foreman finally told the claimant that he would contact the claimant if the employer again had work for him to do. As of the date of the hearing, the employer had not called the claimant to ask him to return to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. A layoff is a suspension from pay status (lasting or expected to last more than seven consecutive calendar days without pay) initiated by the employer without prejudice to the worker for seasonal employment. 871 IAC 24.1(113).

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).

Even though the claimant had not been at work a few days he could have worked, the facts indicate the employer's work was slowing down and there really was not any more work for the claimant to do as of October 20. The facts establish the employer had to layoff the claimant for a lack of work. This constitutes an employment separation for nondisqualifying reasons. Therefore, as of October 22, 2006, the claimant is qualified to receive unemployment insurance benefits.

If the employer calls the claimant back to work and the claimant declines to return, the employer should report this to the local Workforce office.

DECISION:

The representative's November 22, 2006 decision (reference 02) is affirmed. The reason for the claimant's employment separation does not constitute work-connected misconduct. Therefore,

as of October 22, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs