

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**OSSIE A OGWO**  
Claimant

**APPEAL NO: 11A-UI-15035-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROQUETTE AMERICA INC**  
Employer

**OC: 10/02/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's November 9, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Chris Wildrick, the human resource representative, and Doug Yeager, the associate team leader, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

Based on his resume, interview and his answers to technical questions, the employer offered the claimant a job as a computer specialist. The claimant started working for the employer in February 2011. In addition to working next to employees and watching the employees work, the claimant also went to France for training for about a month. When the claimant returned from his training in France, specialists in France concluded the claimant was not competent to work alone. The claimant's June 2 assessment skill test verified the claimant needed more training. The employer expects an employee to get 80% or more on the assessment skill test and the claimant only had 40%. As a result of his assessment skill test and trainers' concerns, the employer did not allow the claimant to work by himself.

On July 19, Yeager talked to the claimant about his performance. Yeager explained that the claimant was not meeting the employer's expectations and his work was not satisfactory. One of the problems the claimant at work involved a co-worker who was supposed to answer the claimant's questions. The claimant did not get along with this person and eventually this person was moved so the claimant did not work next to him.

In an attempt to help the claimant improve and learn his job, Yeager asked that the two of them have weekly meetings to discuss his progress and problems the claimant or employer needed

to address. After Yeager set up the first weekly meeting, the claimant set up the rest of the weekly meetings. While most employees can work alone after returning from France, the longest anyone took to perform the job satisfactorily was six months. In late August, the employer gave the claimant a warning letter for unsatisfactory work performance. The employer gave the claimant an action plan to follow and complete.

On September 8, Yeager and Wildrick met with the claimant and gave him a final written warning for continued unsatisfactory work performance. The claimant was frustrated when he went into the meeting because of the way the employer told him to go to the office. The claimant believed his peers knew he was being reprimanded for unsatisfactory work performance. Also, the claimant had been working extra hours and going to work when he was not scheduled and on weekends in an attempt to learn more and meet the employer's job expectations.

During the September 8 meeting when the employer gave him a final written warning for unsatisfactory work performance, the claimant commented that the employer was not patient with him, the claimant did not want to waste the employer's time and suggested the employer should just end his employment. Even though the employer concluded the claimant had given up trying to improve, the claimant's employment continued. The claimant had not given up, he was still trying to learn his job. In an attempt to speed up his learning process, the claimant asked a co-worker for extra training so he could do his job satisfactorily. The claimant felt a great deal of pressure to do his job satisfactorily. When the claimant took a skills assessment test on September 22, he scored 61% or 2% lower than he had scored in mid-August.

In late September the employer heard from other other employees that the claimant had his bags packed and was ready to go back to Philadelphia. The employer did not ask the claimant if he had his bags packed. On October 5, the employer discharged the claimant because he was still unable to perform his job satisfactorily and the employer concluded he no longer tried to improve his job performance. The claimant kept asking the employer for more time to learn his job.

#### **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 employer established justifiable business reasons for discharging the claimant. Even though the claimant satisfactorily passed the employer's screening process, it took him more time than other employees to learn his job. Even after the claimant spent time in France, he did not grasp or know how to do his job satisfactorily. Yeager tried to work with the claimant, but the claimant did not still did not grasp what he needed to do or learn quickly enough.

Some employers use a probationary period to evaluate if a person can successfully perform the job he was hired to do. There are times an employer does all that is possible in a business setting and the claimant works to the best of his ability, but the claimant does not meet the employer's job expectations. This is what happened here. The employer gave the claimant extra time and tried to help him learn his job. The claimant worked to the best of his ability and put forth extra effort to perform his job satisfactorily, but did not. When this happens it is unfortunate, but the employer has no way of knowing how long it would take the claimant to successfully grasp all his job duties. It is understandable that the claimant felt frustrated and even humiliated when he tried to do this job and still the employer was not satisfied with his work and efforts.

The facts establish that even though the claimant worked to the best of his ability, he was unable to do the job to the employer's satisfaction. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. He was just unable to perform the job to the employer's satisfaction. As of October 2, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's November 9, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of October 2, 2011, 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/pjs