

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH G STOKES
Claimant

APPEAL NO. 14A-UI-02505-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CBOCS INC
Employer

**OC: 01/19/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 28, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 27, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kim Wadsager participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer as a cashier-server from April 19, 2010, to February 12, 2014. He had been warned on January 17 and 25, 2014, for arriving seven minutes late for work. The warning on January 25 was a final warning.

There was a meeting scheduled for February 10 at 2 p.m. that the claimant asked to attend. This was not a scheduled workday for the claimant. He arrived for the meeting a few minutes after 2 p.m. because he had been assisting his grandfather who has mobility problems getting into his car and it took longer than expected. When he arrived, the meeting had not started yet and the servers attending the meeting were casually talking. No one spoke to him about being late and the meeting started a couple of minutes after he arrived.

The employer discharged the claimant on February 12, 2014, for excessive tardiness.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

No willful and substantial misconduct has been proven in this case. The claimant was a few minutes late for a meeting scheduled on a day he was not scheduled to work. The meeting had not started when he arrived and there is no evidence of harm to the employer. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

DECISION:

The unemployment insurance decision dated February 28, 2014, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs