

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY R STUTER**  
Claimant

**APPEAL NO. 07A-UI-02406-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE COUNTY**  
Employer

**OC: 01/28/07 R: 04**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Suspension/Discharge

**STATEMENT OF THE CASE:**

Cody R. Stuter (claimant) appealed a representative's February 26, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Dubuque County (employer) would not be charged because the claimant had been suspended/discharged for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 26, 2007. The claimant participated in the hearing. A.J. Clemons, a union representative was also present. Cathy Hedley, the administrator, appeared on the employer's behalf. During the hearing, Employer 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 suspend/discharge the claimant for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 18, 2003. The claimant worked as a part-time food service worker.

During his employment, the claimant borrowed cigarettes from residents, but always repaid the residents with one or more cigarettes. The claimant did not know residents had been told they were not supposed to lend cigarettes to employees. After the employer suspected residents' cigarettes were being taken without permission, the employer posted a memo informing employees that taking residents' cigarettes and/or lighters for a staff member's personal use was considered theft and reportable as abuse. The claimant saw the memo but did not consider borrowing a cigarette the equivalent of taking a cigarette or theft.

On January 28, 2007, the claimant borrowed a cigarette from a resident with the resident's permission. The claimant smoked the cigarette in front of another employee in the resident's smoking room. On January 29, 2007, the claimant worked a double shift. While working, the claimant borrowed a cigarette from another employee. The claimant initially smoked half of

the cigarette. Later when the claimant was in the resident's smoking area, he used a lighter from the residents' smoking material and lit the cigarette. The claimant smoked this cigarette in front of the same employee who had seen him the day before. The employee did not say anything to the claimant. This employee, however, reported that the claimant took a resident's cigarette and smoked it in front of her on January 29, 2007.

When the employer talked to the claimant on January 30, 2007, his responses to the employer's questions indicated he did not understand the employer's memo. Hedley, however, believed the claimant should have understood that he was not allowed to even borrow cigarettes from residents. The claimant acknowledged he had borrowed a cigarette from a resident on January 28, but denied he had taken any resident's cigarettes without permission on January 29, 2007. The employer suspended the claimant on January 30, 2007. On March 23, 2007, the employer discharged the claimant for the same incident.

### **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).

Based on the employer's conclusions as to what happened on January 29, the employer established business reasons for suspending and then discharging the claimant. The employee who witnessed the claimant smoking on January 28 and 29 did not participate in the hearing. The employer's reliance on unsupported hearsay information (Employer Exhibit One) cannot be given as much weight as the claimant's credible testimony. Therefore, the claimant's version as to what happened on January 29, 2007 is reflected in the findings of facts. Also, as a matter of common sense, it would be illogical for the claimant to take a resident's cigarette on January 29 and smoke it in front of a co-worker after the employer recently posted a memo that informed employees taking residents' cigarettes was considered theft.

The claimant should not have used a resident's lighter, but this act by itself does not constitute work-connected misconduct. The facts do not establish that the claimant committed work-connected misconduct on January 29, 2007. Therefore, he was suspended and ultimately discharged for reasons that do not disqualify him from receiving benefits. As of January 28, 2007, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's February 26, 2007 decision (reference 01) is reversed. The employer suspended and then discharged the claimant for reasons that do not constitute work-connected misconduct. As of January 28, 2007, 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.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw