

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HERMAN H SARDUY
Claimant

APPEAL NO: 13A-UI-11548-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUITAR CENTER STORES INC
Employer

OC: 09/15/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 7, 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 4 in-person hearing. The claimant's wife, Betty, was present at the hearing, but did not testify. Megan Morrow, the store manager, and Jeremy Hay, an assistant manager, testified 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 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 started working for the employer in November 2008. The claimant worked as a full-time drum sales associate.

On September 5, 2013, a customer, who did not like the claimant, went to the employer's store. The claimant did not recognize the customer and asked if he could help the customer. The customer indicated he did not want the claimant to help him because the claimant was an "asshole." The claimant then asked Hay to help the customer and told Hay that the customer called the claimant an asshole. Hay helped this customer. As the customer was leaving, the claimant made a comment from about ten feet away, "I hope you have a pleasant day and maybe someday we'll meet again." The customer indicated that he was heading outside then. Hay did not report this incident on September 5 or talk to the claimant about his comments after the customer left the store.

On September 6, the customer made a formal complaint about the claimant and reported that the claimant had verbally threatened him. As a result of the customer's complaint, the employer suspended the claimant on September 9 for three days. The employer suspended the claimant to investigate the complaint.

On September 10, in an attempt to keep his employment, the claimant wrote a letter apologizing for his actions and comments toward the September 5 customer. The claimant explained that he had not verbally threatened this customer. (Employer Exhibit One.) After deciding the customer perceived the claimant's remarks as a threat, the employer discharged the claimant on September 10 for his September 5 conduct and comments toward this customer.

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 established business reasons for discharging the claimant. While the claimant used poor judgment when he repeated to Hay what the customer called him and should not have said anything to the customer after Hay assisted this customer, the evidence does not establish that the claimant verbally threatened the customer. The fact Hay did not immediately report this incident to Morrow or talked to the claimant after the customer left on September 5 supports the conclusion that the claimant did not verbally threaten this customer. The evidence establishes this customer did not like the claimant, which is evidenced by the fact he told the claimant he was an asshole.

Even though the employer had business reasons for discharging the claimant, the claimant did not commit work-connected misconduct. As of September 15, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's October 7, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of September 15, 2013, the claimant is qualified to receive 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