

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEROY PALMER

Claimant

APPEAL NO. 14A-UI-02372-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC

Employer

OC: 02/02/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 21, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Kirsten Regenwether participated in the hearing on behalf of the employer with a witness, Chance Casel. Exhibits One through Five were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a bulk order filler from January 31, 2006, to January 30, 2014. He was informed and understood that under the employer's work rules, insubordination was grounds for discipline.

On October 24, 2012, a new manager approached the claimant about an issue. He told the manager to talk to his supervisor because he did not agree with what the manager was saying. The claimant was given a final written warning for disrespecting the manager on November 7, 2012.

On January 28, 2014, the human resources manager, Kim Bennett, held a staff meeting to discuss the employer's new vacation policy under which employees accrued vacation rather than getting a certain number of weeks of vacation per year. Before the meeting, the claimant had asked if he could be excused from the meeting because the policy had already been explained to the claimant and he agreed with it. His supervisor told him that he had to attend the meeting.

During the meeting, an employee asked Bennett a question. After she responded, the employee said "that sounds stupid." Bennett then told the employee to shut up, which upset the claimant. The claimant then raised his hand and asked to speak. He asked why if he had a

scheduled vacation that he would be told that he did not have the time available. He said that would be confusing. Bennett then told the claimant to shut up. The claimant made a remark about it not being the time of Jim Crow and people not being put in their place for saying things. Bennett told the claimant to hold his comments. The claimant replied that she was one of the one percent of the 47 percent who do not understand people. Bennett then said to the claimant that he did not want to be at the meeting anyway, so he should leave. The claimant did as instructed and left.

Bennett reported what happened at the meeting to the regional vice president, Paul Overman. Overman then reviewed the claimant's work history and decided that the claimant had excessive absences, productivity issues, and prior conflicts with managers. In light of the work history and the claimant's conduct in meeting, Overman informed the claimant on January 30, 2014, that he was being terminated due to his overall job performance. The claimant's recent absences were due to illness and were properly reported.

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 unemployment insurance rules provide: "While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act." 871 IAC 24.32(8).

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, 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof.

The evidence is clear that the main reason for the claimant's discharge—the triggering event—was his conduct during the meeting. I believe the claimant's testimony that Bennett told another employee and then told the claimant to shut up. This set the stage for what happened afterward, as it appeared Bennett was not interested in responding to questions or comments

about the policy. I conclude the claimant was not willfully insubordinate in the meeting. The courts have emphasized that “employees are not expected to be absolutely docile and well-mannered at all times.” Carpenter v. Iowa Dept. of Job Service, 401 N.W.2d 242, 246 (Iowa Ct. App. 1986). It is clear that claimant’s personality was sometimes abrasive, but I cannot conclude that willful and substantial misconduct had been proven in this case. The remaining reasons for the claimant’s discharge amount to unsatisfactory conduct not rising to the level of disqualifying misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated February 21, 2014, reference 01, 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