

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ASHLEY K MENTZER  
2722 WITMER ST  
DES MOINES IA 50310

VEH ENTERPRISES  
c/o EUGENE HISKEY  
2701 COTTAGE GROVE  
DES MOINES IA 50311

Appeal Number: 05A-UI-03815-DW  
OC: 03/06/05 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

VEH Enterprises (employer) appealed a representative's March 31, 2005 decision (reference 02) that concluded Ashley K. Mentzer (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held in Des Moines on April 26, 2005. The claimant participated in the hearing. Eugene Hiskey, the owner, Bill Hiskey, the general manager, Jim Mallory, Pam Ren and Judith Hernandez appeared on the employer's behalf. 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 discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working full-time for the employer in customer sales. The claimant worked at the front counter of the employer's dry cleaning business. The claimant worked about three weeks for the employer.

On March 9, 2005, when the claimant came to work, Hiskey was standing in the front store at the register. He made the comment that he smelled liquor. When Hiskey talked to the general manager and other employees, they reported they had previously detected an odor of alcohol about the claimant. No one said anything to the claimant.

On March 10, 2005, the employer discharged the claimant because the employer concluded she came to work under the influence more than once.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 discharged the claimant for business reasons. The employer may have detected a strange odor on March 9, but with the exception of one person, the employer's witnesses only testified about an odor they detected and nothing else. Even though the general manager indicated he had detected the odor of alcohol on the claimant prior to March 9, he never talked to the claimant about this observation. While the general manager may be busy, if he truly believed an employee came to work under the influence it is his responsibility to warn the employee that this is not acceptable behavior. Even though five people testified they had smelled alcohol on the claimant's breath, none of these people have received any alcohol training. Some testified they had detected beer and one person thought the claimant smelled like bourbon. Without some concrete test, such as the results of a drug test, the evidence does

not establish that the claimant reported to work under the influence. Even if the claimant had an odor of alcohol on her breath, this does mean the claimant was under the influence when she reported to work. The evidence does not establish that the claimant committed work-connected misconduct. As of March 6, 2005, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's March 31, 2005 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of March 6, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account will not be charged during the claimant's current benefit year.

dlw/pjs