

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON W KINSHAW
Claimant

APPEAL NO: 07A-UI-02942-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LENNOX MFG INC
Employer

OC: 12/31/06 R: 02
Claimant: Respondent (1/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Lennox Mfg., Inc. (employer) appealed a representative's March 20, 2007 decision (reference 02) that concluded Brandon W. Kinshaw (claimant) was qualified to receive unemployment insurance benefits, and the employer's account could be charged because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 23, 2007. The claimant participated in the hearing. Bruce Martin, the labor relations manager, 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 established a claim for unemployment insurance benefits during the week of December 31, 2006. The employer is not one of the claimant's base period employers.

The employer hired the claimant to work as a full-time production worker. The employer requires every new employee to attend two consecutive days of training before actually doing any work. The claimant attended a training session on February 12. On February 13, the weather resulted in adverse driving conditions. The claimant contacted the employer at 6:30 a.m. to report he was unable to get to the scheduled training that day. The claimant called the employer later that day and asked for another opportunity to receive the training so he could work for the employer. On February 23, 2007, the employer contacted the claimant and told him he could attend the two-day training on February 26 and 27.

The weekend of February 24-25 there was a winter storm. The area the claimant lives experienced an ice storm. Around 5:00 a.m. on February 26, the claimant lost his electricity. The claimant called the employer around 6:45 a.m. to report he was unable to get to work because of hazardous driving conditions. The claimant could not get to the training on time

because of the icy road conditions and he did not want to leave his fiancée, who was five months pregnant with twins. The claimant took his fiancée to her mother's home that was about 20 miles from the claimant's home. The claimant was not able to get to his fiancée's mother's home until early afternoon because of the dangerous driving conditions. The claimant called the employer late afternoon on February 26, 2007. The claimant learned he would not be allowed to attend the training the next day and the employer no longer considered him an employee.

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 section 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 established compelling business reasons for ending the claimant's employment. When the claimant was unable to attend the second training session, the employer had legitimate concerns about his reliability. The evidence, however, indicates the claimant contacted the employer before the training started on February 13 and 26 to report he was unable to get to the training session because of adverse weather and road conditions. The employer agreed there was adverse weather both days, but other employees made it to work. The employer did not know where the other employees lived.

The facts do not establish that the claimant intentionally failed to report to the scheduled training sessions. Instead, weather and road conditions prevented him from getting to the training sessions safely. The claimant also properly notified the employer he was unable to attend the training sessions. Even though the employer had business reasons for discharging the claimant, he did not commit work-connected misconduct. Therefore, as of February 25, 2007, the claimant remains qualified to receive unemployment insurance benefits.

Since the employer is not a base period employer, the employer's account will not be charged during the claimant's current benefit year.

The employer asserted the claimant received wages for training he attended on February 12. As a result, an issue of whether the claimant earned wages for the week ending February 17 and properly reported any wages is remanded to the Claims Section to investigate.

DECISION:

The representative's March 20, 2007 decision (reference 02) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 25, 2007, the claimant remains qualified to receive unemployment insurance benefits provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged. The issue of whether the claimant earned any wages and properly reported wages earned during the week ending February 17, 2007, is remanded to the Claims Section.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs