

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J FLESHNER
Claimant

APPEAL NO: 11A-UI-16565-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ISLE OF CAPRI MARQUETTE INC
Employer

OC: 11/20/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 23, 2011 determination (reference 02) that amended reference 01. The determination disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with his father, Ken Fleshner. Rachel Morrissey, the risk and benefits manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant as a part-time slot attendant in December 2010. The employer transferred the claimant to the housekeeping department on March 25, 2011. The claimant worked as a part-time housekeeper. His supervisor was Rick Meyer.

After the claimant was transferred to the housekeeping department, the employer trained him three days. During the training, the employer showed the claimant what jobs needed to be done and how to do them. Shortly after the claimant completed the three-day training, he received a written warning on March 30 for failing to meet the employer's standards or unsatisfactory job performance. The employer continued the claimant's training. On June 13, the employer gave the claimant a second written warning for riding the elevator during his shift and for unsatisfactory work performance. The employer expects employees to use stairs, not elevators while working. When the claimant worked, he did not use elevators after June 13. The employer also gave the claimant the June 13 warning because he did not get certain jobs that he was asked to do quickly enough or he did not do them satisfactorily. The claimant understood that if there were more problems with his job performance, the employer would discharge him.

To help the claimant after June 13, Meyer gave him a list of job duties to complete each day. At the end for the week, they would talk about these jobs. If the claimant was not getting them done satisfactorily, Meyer tried to help the claimant. There were times, other employees completed the job assigned to the claimant because they were done with their work and he was not. The claimant worked to the best of his ability and tried to do his work quickly and to the employer's satisfaction.

The last day the claimant worked was July 3. The employer scheduled a meeting with him on July 8 after co-workers again reported the claimant was not doing his job. In addition to not doing his job satisfactorily, co-workers reported that the claimant was not doing certain job tasks, such as vacuuming. On July 8, the employer discharged the claimant for continued poor or unacceptable work performance.

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).

The employer established justifiable business reasons for discharging the claimant. Even though the claimant worked to the best of his ability, he was unable to complete his work fast enough or good enough to meet the employer's standards. The employer acknowledged that even though the employer believed the claimant had the ability to do the work satisfactorily, he never demonstrated that he could complete his work to the employer's satisfaction. Under the facts of this case, the employer discharged the claimant for poor work performance. The evidence does not establish that the claimant intentionally failed to complete his work satisfactorily. The claimant did not commit work-connected misconduct. As of November 20, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's December 23, 2011 determination (reference 02) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of November 20, 2011, 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/css