

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND C GALLAGHER
Claimant

APPEAL NO. 10A-UI-13030-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHOON CONSTRUCTION INC
Employer

OC: 08/22/10
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Raymond Gallagher, appealed an unemployment insurance decision dated September 15, 2010, reference 01, that concluded he was discharged for work-connected misconduct. A hearing was held on January 26, 2011, in Spencer, Iowa. The parties were properly notified about the hearing. The claimant participated in the hearing. Leo Klotz participated in the hearing on behalf of the employer with a witness, Richard Ockerman.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as an inventory clerk from September 28, 2009, to August 24, 2010. His supervisor was the warehouse manager, Richard Ockerman. He was informed and understood that under the employer's work rules, unauthorized possession or removal of company property (including documents) from the premises without permission from management was grounds for discharge.

Ockerman had a separate office from the warehouse. The office contained some file cabinets. The claimant had to have access to the office and documents in a couple of file cabinets to perform his job. Ockerman also had a personal file cabinet next to his desk, in which he kept personal files and documents, including job performance notes for employees. The claimant had never been told he was prohibited from accessing the file cabinet but had no business reason for opening this file cabinet. Ockerman normally kept the file cabinet locked.

On August 24, the claimant was in Ockerman's office checking some inventory documents. Ockerman was out of the office at the time. He sat down at Ockerman's desk to look over the documents. He became curious about what was in Ockerman's personal file cabinet, found it unlocked, and opened it. He discovered a file folder with his name on it that contained documentation Ockerman had prepared about the claimant's job deficiencies. The claimant took documents out of the file and copied them on the company copy machine. He believed he needed copies of the documents to show human resources, the owner, or a lawyer that Ockerman was intent on firing him. The claimant mistakenly left one of the documents in the copy machine.

When Ockerman came back to his office, he found the document in the copy machine. After he reported what he had found to the human resource director, Leo Klotz, they called the claimant in for a meeting. He admitted he had taken the documents out of the file cabinet and had copied them. Consequently, the claimant was discharged for his conduct on August 24.

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).

Technically, copying documents without taking them out of the building would not constitute theft or unauthorized removal of company property from the employer's premises in violation of the rule. But the rule also prohibits unauthorized possession of documents without management permission. The claimant's conduct unquestionably violated this rule. In addition, even without the rule, the claimant did not have to be told that a particular file cabinet was off limits to know that he was not authorized to take documents out of file folder created by his supervisor and copy them. This is a violation of ethical standards the employer had the right to expect of any employee. His conduct was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

DECISION:

The unemployment insurance decision dated September 15, 2010, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw