

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZEKE A ZOECKLER**  
Claimant

**APPEAL NO. 13A-UI-03678-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUBURBAN CONSTRUCTION INC**  
Employer

**OC: 01/27/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 18, 2013, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 30, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Darin Wilson participated in the hearing on behalf of the employer. Exhibits One through Eight were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a crewmember in the employer's exterior remodeling business from January 3, 2012, to February 27, 2013. He was informed and understood that the employer's work rules prohibited unsatisfactory conduct, insubordination, or other disrespectful conduct.

On February 8, 2013, the employer's vice president, Darin Wilson issued the claimant a final written warning after he questioned the employer's decision to call off work due to weather on January 31, interrupted Wilson during his performance review telling Wilson it was bullshit and he was not going to lay down like a little bitch like the rest of the guys. He was told that if he continued to have a poor attitude and display insubordination, he would be terminated.

On February 21, the claimant was working on a job with a foreman, Leon Hibst. The project used a plank between two ladders for scaffolding. Hibst became upset with the claimant and a coworker after a plank fell while they were moving the ladders to a different location. The claimant asked for work to do, and Hibst told him to work on the garage door area. The claimant could not reach some of the garage door area where he had to fill in some wood so he had to wait for a plank to be freed up because they were being used by other crewmembers. He went back and asked for something to do in the meantime. Hibst did not respond so the claimant went to the back of the house to help other workers until he had the plank to work on the garage door.

On February 26, the claimant drove his truck two hours to a jobsite. There was a crew of about 13 at the jobsite. After a half hour at the jobsite, Hibst decided the weather was too bad to continue and announced he had forgot the corner-post inserts and it was snowing, so they were going home. The claimant was frustrated because he driven two hours and had gas expenses but would not be working that day. He said to Hibst, "Really Leon, seriously. We drove this far with this many guys and we are going to work for a half hour and go home?" They ended up working for another hour and then returned to Davenport.

Hibst reported to Wilson what had happened on February 21 and told Wilson that the claimant had been argumentative. He reported what had happened on February 26 and told Wilson the claimant had yelled and thrown a temper tantrum.

As a result of the final warning and Hibst's reports that the claimant was argumentative and insubordinate, Wilson discharged the claimant on February 27, 2013.

### **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 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 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 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 claimant testified under oath and subject to cross-examination as to what happened on February 21 and 26. His testimony was credible. The employer's evidence was a written statement from Hibst who was not present at the hearing. The claimant's testimony is entitled to greater weight.

I cannot conclude the claimant's conduct on February 21 was insubordinate or disrespectful. He admitted he had disagreed with Hibst about shutting down the job due to weather after a half hour. Iowa courts, however, have emphasized that "employees are not expected to be entirely docile and well-mannered at all times." *Carpenter v. Iowa Department of Job Service*, 401 N.W.2d 242, 246 (Iowa Ct. App. 1986). I believe the claimant's questioning Hibst after driving two hours to work only one-half hour was understandable. I do not believe his conduct—based on the claimant's testimony of what he said—amounted to willful and substantial misconduct.

**DECISION:**

The unemployment insurance decision dated March 18, 2013, reference 03, is reversed. 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