

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

JERRY L WEHDE
1651 – 34TH ST SE APT 5
CEDAR RAPIDS IA 52405

SHAKESPEARE FLOWERS INC
830 – 33RD AVE SW
CEDAR RAPIDS IA 52404

AMENDED

Appeal Number: 04A-UI-12334-DWT
OC: 06/04/04 R: 03
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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Shakespeare Flowers, Inc. (employer) appealed a representative's November 16, 2004 decision (reference 05) that concluded Jerry L. Wehde (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 address of record, a telephone hearing was held on December 17, 2004. This hearing was consolidated with the hearing for appeal 04A-UI-12332-DWT. The claimant participated in the hearing with George D. Henson. Alisa Shakespeare and Katie George 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 claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late August 2004. Henson became the claimant's supervisor in mid-September 2004. The claimant worked part time, 25 to 30 hours a week, as a pieceworker.

After the claimant received a paycheck on September 24, he noticed some problems with the amount of pay and told Henson he had not been paid properly. On September 27, the claimant told the owner he thought there was a problem with his most recent paycheck. The owner was very busy at the time and indicated she would look into the matter later. The claimant understood the owner was very busy then and did not say anything else for a while.

On October 22, the owner was busy getting paychecks to people who had been working for the employer through a temporary staffing firm but had transferred to the employer's payroll. On October 22, the claimant reported there were some problems with his current paycheck and a previous paycheck. The owner resolved the problems with his current paycheck that day, but did not have access to records to address the previous payroll problem. The owner indicated she would review this issue over the weekend. The owner incorrectly assumed the claimant was scheduled to work on October 23 and 24 so she could review the records with him and resolve his concerns. Since the claimant was not scheduled to work, he had no idea the owner wanted to go over the records with him on Saturday or Sunday.

On October 25, the owner was not at work because she was ill. On October 26, around 8:15 p.m., the claimant asked the owner if she had looked over his pay records. The owner was upset with the claimant for not reporting to work that weekend and told him that according to the records she had the employer did not owe him any money. Since she had set aside the weekend to go review this matter with him, he was at the bottom of her list of priorities because he did not bother to take care of his concerns that weekend. The owner did not have access to the records and indicated she would get together with the claimant in the next few days to review his records with him. The claimant did not understand why the owner appeared upset with him but indicated this was satisfactory and left to return to work. The owner, who still did not feel well, then left the workplace.

The claimant went back to work, but was confused by the owner's reaction and told Henson about her comments. The claimant indicated he would be looking for another job if the pay issue was not resolved.

About ten minutes later, the owner received a call from Henson. He told her the claimant was going to leave work early because the owner would not resolve his payroll issue and considered his payroll concern at the bottom of her priority list. The owner told Henson she was not coming back to work that night and there was nothing she could do that night because she did not have access to any records. After the owner indicated it was the claimant's decision to leave if he wanted to, Henson told her he was going to leave also.

After talking to the owner, Henson told the claimant he had been told to discharge him, but he did not want to discharge him. The owner called Katie George and told her to have the claimant sign a statement saying he was voluntarily quitting his employment if he left work. Katie George saw that neither man was working and told them to get back to work. Both refused to work. George then told them that if they were not going to work, they had to leave. She asked the claimant to sign a statement verifying that he was quitting. The claimant refused to sign a statement because he did not plan to quit that night. When the claimant refused to work, sign the statement or leave, George escorted him off the property and warned him that she would call the police if he did not leave.

The claimant did not return to work because he understood he had been discharged the evening of October 26. A few weeks later, the claimant and the employer met to talk about problems the claimant had with his previous paychecks. The employer discovered the claimant had not been paid for all the time he worked because he had been told not to punch in on two days. The claimant and employer then realized there had been some miscommunications between the claimant and the employer. The claimant returned to work for the employer on November 23, 2004.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The evidence does not establish that the claimant intended to quit on October 26, 2004. Even though the claimant planned to look for another job if his pay issue was not resolved, the claimant had no intention of quitting his employment on October 26, 2004. This is supported by the fact the claimant refused to sign a statement indicating he voluntarily quit his employment and did not want to leave work early.

A preponderance of the evidence establishes the employer discharged the claimant the evening of October 26, 2004. This conclusion is supported by several factors. First, the claimant's supervisor, Henson, told him the employer had discharged him. Next, George escorted the claimant off the employer's property when he refused to return to work or sign the voluntarily quit statement. After Henson informed the claimant that the employer had discharged him, it is understandable as to why the claimant refused to return to work when George asked him to. The claimant reasonably believed the employer discharged him as Henson reported.

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).

Unfortunately, after Henson talked to the employer, the employer became upset and directed George to take certain actions based upon only information from Henson. After the employer directed George to get the claimant's signature verifying he was quitting, neither party acted reasonably. The claimant was upset that he had been discharged and the owner, who was on the phone, was upset that both the claimant and Henson failed to work or leave. Under the owner's understanding of the facts, the employer established business reasons for discharging the claimant the evening of October 26. The evidence does not, however, establish that the claimant committed work-connected misconduct. This is supported by the fact that after the employer and claimant had an opportunity to clear up some misunderstandings and review the claimant's pay, the claimant returned to work for the employer.

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

DECISION:

The representative's November 16, 2004 decision (reference 05) is affirmed. The employer discharged the claimant on October 26, 2004, for reasons that do not constitute work-connected misconduct. As of October 24, 2004, the claimant is 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.

dlw/pjs/tjc