

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS J DANILSON
Claimant

APPEAL NO: 10A-UI-00604-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACEO LLC
Employer

OC: 12/13/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's January 11, 2010 decision (reference 01) that concluded the claimant was qualified to receive benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on February 22, 2010. The claimant participated in the hearing. Susan Lorfeld 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 started working for the employer on April 19, 2008. The claimant worked part time as the employer needed him to work. The claimant worked as a team member. The employer is in the business of removing debris from homes and businesses.

While the claimant's supervisor was not happy when the claimant was not always available to work when the employer had work for him to do, no one told the claimant his job was jeopardy. On April 22, 2009, the claimant contacted the employer around 3:30 p.m. to report that he and his team member had finished a job. The employer asked the claimant to go to a park where his manager was picking up garbage. The employer had volunteered to pick up garbage at the park from 2:00 to 4:00 p.m. as part of Earth Day activities. The claimant told the employer that he and his partner would go to the park.

After the claimant finished talking to the employer, the claimant's father called him. His father was at the claimant's house and wanted to talk to the claimant before he had surgery the next week. The claimant's father was on his way out-of-town and wanted to discuss what the claimant should do if he did not survive his surgery. The claimant felt he had to talk to his father. After talking to his father, the claimant called the manager who was working at the park. The claimant told the manager that he needed to talk to his father before he went to the park.

The manager told the claimant to come to the park as quickly as possible. The team member dropped the claimant off at his home. The claimant told his team member to go to the park to help the manager pick up the garbage.

About 30 minutes later the employer called the manager to find out how the garbage pickup was going. She then learned the claimant had not yet arrived at the park. His team member was not at the park either. The employer then called the claimant. The claimant was still at his home talking to his father. The employer told the claimant that this was his last day of work. The employer discharged him because he failed to contact the employer before he went home to talk to his father, that the claimant had no intention of going to the park to work and that he told his team member he did have to go to the park to help the manager.

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).

Right after the claimant told the employer he would go to the park to help the manager pick up garbage, his father called and wanted to talk to the claimant about personal matters. The claimant thought it was more important to talk to his father right away than go immediately to the park. While the claimant did not call the employer again, he called the manager at the park and told him he needed to talk to his father. The claimant understood this was alright as long as he came to the park as quickly as possible. The evidence does not establish that the claimant told his team member that he did not have to go to the park to help the manager.

Based on the information the employer had at the time she discharged the claimant, the employer had justifiable business reasons for discharging him. The facts do not, however, establish that the claimant intentionally violated the employer's interest. He may have used poor judgment when he did not also contact employer about talking to his father before he went to the park. This omission does not, however, rise to the level of work-connected misconduct. Therefore, as of December 13, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's January 11, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the evidence does not establish that the claimant committed work-connected misconduct. As of December 13, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css