

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC A WESTVOLD

Claimant

APPEAL NO. 11A-UI-10337-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOOTER STORE DES MOINES LLC

Employer

OC: 06/26/11

Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 20, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Michael Mathews, the distribution center 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 claimant started working for the employer in late June 2010. He worked part-time as a mobility and service specialist. Mathews started working at the claimant's location on June 28, 2011.

On May 17, 2011, the employer talked to the claimant about a problem with a delivery he had made in late March 2011. The employer told the claimant he had to make all future deliveries as quoted. The employer wanted any problems with a delivery corrected before the product was delivered to a customer. On May 25, the claimant had his first cash sale and did not do it correctly. The claimant did not follow the correct cash sale procedure. The employer warned the claimant that further issues would result in a corrective action up to and including his termination.

The weekend of June 25, the claimant made two deliveries to Manley, Iowa. He delivered a chair to a customer who had also ordered and paid for a flag. The claimant did not see or notice paperwork indicating the customer had paid for a flag. The claimant delivered the product to the customer without the flag that day because he did not know the customer had ordered a flag. The second incident happened when the claimant took the seat off a chair for a customer because the customer needed an adaptor for an oxygen tank. The claimant could not put an adaptor on the seat of the original chair. The claimant did not realize the seat he used from another chair had a barcode on it for inventory purposes. The claimant could not ask anyone that weekend what he should be in either case.

The corporate human resource director and the director of distribution discharged the claimant for continued unsatisfactory work performance. The employer discharged the claimant on June 29, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 facts establish the employer addressed different mistakes that the claimant made. The facts do not establish that claimant intentionally made mistakes. The claimant worked to the best of his ability, but the employer was not satisfied with his work performance. The claimant did not commit work-connected misconduct. As of June 26, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's July 20, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of June 26, 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/kjw