

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUAN RAZO
Claimant

APPEAL NO: 13A-UI-02583-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

**OC: 01/27/13
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 26, 2013 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 nondisqualifying reasons. The claimant participated in the hearing. Alice Rose Thatch represented the employer. Lisa Stillwater, Terry Graybill and Mandy Hirschman, the human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is 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 December 2008. He worked full time in the warehouse. During his employment, the claimant received a copy of the employer's code of conduct. The code of conduct in part informs employees the employer requires employees to be honest, ethical, and have integrity and morals. The code of conduct also informs employees that where criminal laws are violated, termination may occur.

On January 15, 2013, while off duty, the claimant was arrested and charged with possession of drug paraphernalia in a county the claimant did not work. On January 22, the claimant pled guilty to a misdemeanor.

The employer received an anonymous statement in a comment box that the claimant had been arrested and charged with a criminal offense. The employer looked on-line to verify the anonymous report. On January 31, 2013, the employer talked to the claimant about the charge against him. The claimant verified that he had already pled guilty. The employer then discharged the claimant for violating the employer's code of conduct by engaging in conduct that was unbecoming to an employee.

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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that off-duty misconduct may constitute work-connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. *Kleidosty v. Employment Appeal Board*, 482 N.W.2d 416, 418 (Iowa 1992). Although the court concluded violating a work rule was sufficient to prove the conduct was connected with employment, it did not decide whether violating a work rule was a necessary condition for disqualification in the case of off-duty conduct.

The rule itself provides the answer to this question when it states disqualifying misconduct is defined as a "material breach of the duties and obligations arising out of such worker's contract of employment." This would encompass violation of known work rules, contractual provisions, or warnings issued to an employee by the employer. The rule goes on to require a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees." The question is whether this expands the definition to conduct beyond violating work rules, contractual provisions, or warnings issued to an employee when the conduct occurs off-duty. I would read the provisions together so that the rules, contractual provisions, or warnings establish the standards of expected behavior. Without such an interpretation, there is no way to determine where to draw the line. Employers without work rules, contractual provisions, or warnings regarding off-duty conduct could simply assert that "we expect all of our employees to obey all the laws and ordinances of the state and local government and be morally upright whether they are on or off the job." The law requires more than that to prove work-connectedness. See *In re v. Kotrba*, 418 N.W.2d 313 (S.D. 1988); *Nelson v. Department of Employment Security*, 655 P.2d 242 (Wash. 1982). (In order to establish misconduct connected with an employee's work, the employer must show the employee's conduct: (1) had some nexus with the employee's work; (2) resulted in some harm to the employer's interests; and (3) was conduct that (a) violated of some code of behavior contracted for between employer

and employee, and (b) was done with intent or knowledge that the employer's interest would suffer).

The employer's code of conduct is vague. The employer interprets its code of conduct to mean that the employer expects all employees to obey all laws and be morally upright whether they are on or off the job. While the employer established business reasons for discharging the claimant, the employer did not establish the claimant's guilty plea had a nexus to the claimant's work. The employer did not establish that the employer's interest was harmed or that the claimant had possession of drug paraphernalia with the knowledge that the employer's interest would suffer. The evidence does not establish the claimant's off duty conduct on January 15, 2013 was work connected. Even though the claimant pled guilty to a misdemeanor, he did not commit work-connected misconduct. Therefore, as of January 27, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's February 26, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 27, 2013, 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/tll