

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEAREY J YASHACK
Claimant

APPEAL NO. 12A-UI-02065-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 01/08/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 29, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 13, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Charles Pierce. Sherill Jordon participated in the hearing on behalf of the employer with a witness, Elizabeth Kuebler. Exhibits A, 1, and 2 were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a sales associate in the shoe department from March 20, 2008, to January 9, 2012.

The claimant had received a poor customer service warning on December 11, 2010, after he had told a customer that he would order a boot in her size because the boot was not available in the store. The customer came in a couple weeks later, but the order or merchandise request could not be found. The claimant did not deliberately fail to follow-up on the merchandise request. He received another poor customer service warning on December 18, 2011, when a customer complained that the claimant seemed annoyed when she asked if she could take her shoes to another department for checkout. The claimant asked who she had talked to in the other department, which made her feel uncomfortable. The claimant was not annoyed and did not treat the customer rudely; he was asking to make sure he would get credit for the sales because his job performance was gauged in part by his sales.

In early January 2012, a customer complained that the claimant had not contacted her after she made a request for shoes not available in the store. The merchandise requests are placed in a box with other requests, and the sales associate who takes the merchandise request sometimes cannot get to the request right away. The claimant did not deliberately neglect to follow-up on the merchandise request.

On January 9, 2012, the employer discharged the claimant for insufficient improvement in customer service. The claimant had received 17 written customer compliments from 2008 through 2011.

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 (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).

No willful and substantial misconduct has been proven in this case. At most, the evidence shows isolated negligence not amounting to disqualifying misconduct.

DECISION:

The unemployment insurance decision dated February 29, 2012, reference 01, 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/kjw