

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW L SEWARD
Claimant

APPEAL NO: 12A-UI-03025-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 03/27/11
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 22, 2012 determination (reference 05) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Michael Payne, an unemployment insurance specialist, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two were offered and admitted as evidence. 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 employer is a temporary staffing agency. The employer assigns people to work at business clients' work places. On June 1, 2011, the claimant acknowledged he received information about the employer's attendance policy. (Employer Exhibit Two.) The policy informs employees they receive a certain number of points for various attendance situations. The policy also informs employees about the employer's progressive discipline steps for excessive attendance issues. (Employer Exhibit Two.)

The employer assigned the claimant to a job on June 3, 2011. The claimant worked as a food processor for a business client. During his employment, the client noted when the claimant had attendance issues. Between June 5 and November 23, 2011, the client recorded several attendance issues for the claimant. The claimant did not receive a written warning for any attendance issues until December 12. He received a written warning on this day because he left work early because he was ill. On December 19, the claimant received a written warning when he left work early. (Employer Exhibit One)

During his employment, the client informed employees there were two restrooms available for them to use. One was in the trucker's lounge. Prior to February 2, 2012, the claimant used both restrooms. He used the restroom that was not busy or as busy as the other restroom.

When the claimant left his work area to go to the restroom, he noted that he left the line. He wrote the time that he returned when he came back. Before February 2, no one told him that he was not allowed to use the restroom in the trucker's lounge.

On February 2, the claimant left his work area to use the restroom. He used the restroom in the trucker's lounge because he did not have to wait as long to use it as he would have in the other restroom. When the claimant returned to his work area, no one said anything to the claimant. When the claimant went home from work, he had a message on his answering machine informing him that he was no longer needed at the assignment.

The employer left the message for the claimant after the client had called and asked the employer to remove the claimant from the assignment. The employer understood the client was not happy finding the claimant in the trucker's lounge and reported that the claimant had been gone from his work area for 30 minutes.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

When the client asked the employer to remove the claimant from the job assignment, the employer had no choice but to end the claimant's assignment. The employer established business reasons for discharging the claimant.

Since the employer relied on hearsay information about why the client wanted the claimant's assignment ended, the claimant's testimony must be given more weight than the employer's reliance on unsupported hearsay information. The evidence indicates the claimant had used the trucker's lounge before February 2 and no one warned him that he was not to go to the trucker's lounge to use the restroom. Since the claimant was not previously warned he could not use the trucker's lounge, he did not intentionally violate the employer's interest by using the restroom in the trucker's lounge on February 2.

Even though the client informed the employer the claimant was gone from his work area for 30 minutes or more on February 2, the claimant refuted this assertion. Also, while the claimant had received two written warnings in December for attendance issues, there is no evidence that he had any attendance issues after December 19, 2011. The facts do not establish that the claimant committed a current act of work-connected misconduct. As of January 29, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's March 22, 2012 determination (reference 05) is reversed. The employer discharged the claimant from an assignment for business reasons. The claimant did not commit a current act of work-connected misconduct. As of January 29, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw