

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL R SHUGART
Claimant

APPEAL NO. 10A-UI-14286-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET
Employer

OC: 09/12/10
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 6, 2010, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on December 1, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Angie Tichota participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a logistic team member from August 5, 2003, to August 10, 2010. The claimant had received a warning January 27, 2010, after he had stepped on boxes to retrieve some merchandise instead of using a step letter. He was informed that he could be discharged for another safety violation.

In early September 2010, the claimant was operating the cardboard baling machine. At one point the claimant had the baling machine on with the door to the machine open, which was against safety procedures. The claimant had used baling machines at other locations that would not allow the machine to operate with the door open and was unaware that this machine operated differently. The claimant did not willfully violate safety procedures but was negligent in not making sure the door remained closed when the machine was on.

The employer discharged the claimant on September 10, 2010, for violation of safety procedures.

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 section 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 this was an isolated instance of ordinary negligence, which is not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated October 6, 2010, reference 01, is affirmed. 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/css