

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FLOYD R SHAFER SR
Claimant

APPEAL NO: 11A-UI-06987-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE AMERICAN BOTTLING COMPANY
Employer

**OC: 04/17/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 19, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with his attorney, Michael Carpenter. Julie Montgomery, 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 June 2004. He worked as a full-time forklift operator. The last day the claimant worked for the employer was December 30, 2010. The claimant initially applied for short-term disability because of pain in his lower back. The claimant injured his back in 2005 and has recurring lower back problems.

The employer's third party administrator, UNUM, verified on April 18 to Montgomery that the claimant's request for FMLA had been denied. The employer understood the claimant's FMLA request had been denied because UNUM had not received requested information from the claimant. The claimant, however, understood he had provided UNUM with all requested information. The claimant's workers' compensation claim had also been denied.

On April 12, the claimant's physician released him to work full time as of April 18. The claimant understood he should not lift more than 100 pounds. The claimant contacted Montgomery on April 18 to find out about the status of his FMLA. After checking with UNUM, the employer informed the claimant he was discharged because his FMLA had been denied by UNUM for failing to provide requested documentation.

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).

The employer relied on information an UNUM representative reported as to why the claimant's request for FMLA had been denied. This UNUM representative did not testify at the hearing. The claimant's testimony that he provided all requested information to UNUM is credible. Even if the claimant did not timely provide requested information to UNUM, his doctor only released him to work as of April 18.. The fact a claimant is not covered under FMLA when he has not been released to work or is unable to work, does not establish that he committed work-connected misconduct. Ultimately, the claimant was discharged because he had not been released to work because he was unable to work and FMLA did not cover his absences for a period of time.

The employer established business reasons for discharging the claimant, but the claimant did not commit work-connected misconduct. As of April 17, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's May 19, 2011 determination (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 17, 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/pjs