

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAMES E COLE

Claimant

SEDONA STAFFING SERVICE LLC

Employer

APPEAL NO. 14A-UI-10134-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/31/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 19, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on October 17, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Colleen McGuinty participated in the hearing on behalf of the employer with witnesses, Cheryl Theofilis and Ashley McMeen. Exhibits One, Two, and Five were admitted.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company. The claimant worked full time for the employer as an on-site supervisor at the Rock Tenn location from August 30, 2011, to September 2, 2014.

The employer discharged the claimant on September 2, 2014, because the employer's director of sales and service and Rock Tenn manager believed that he had not been accounting for his time honestly, was claiming to spend his time on activities that they could not verify, and therefore could no longer be trusted. The employer also felt the claimant was not as effective as he was previously when he was working with a smaller number of employees.

The claimant did not misrepresent information about his work activities. For example, he had not for some time attended a 10 a.m. meeting the Rock Tenn had with Proctor & Gamble because everyone agreed that his presence was not necessary. Afterward, the claimant never falsely said to Sedona employees that he had to attend the 10 a.m. Rock Tenn-Proctor & Gamble. The example presented by the employer about a conversation that the claimant had with Ashley McMean, the claimant did not tell McMean he was going to the Rock Tenn-Proctor & Gamble meeting. He was meeting with the safety coordinator about applicants for positions. If he told someone with Sedona, that he had a meeting, his statement was true. The Rock Tenn manager had reported that the claimant was falsely claiming that he was occupied with unemployment insurance matters after he had been relieved from doing that type of work. The claimant stopped dealing with unemployment insurance issues in May 2014. Any statements

made to the Rock Tenn manager about being occupied with unemployment insurance matters were before that. The claimant did not misrepresent taking trips to Moline to Rock Tenn management. There were various reasons for the claimant to need to go to Moline and he was truthful in reporting these trips.

The employer presented information about the claimant asking McMean about her sexual orientation on July 9 and buying an air conditioner for work and damaging it at his home, but these were not the grounds for his termination.

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. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated September 19, 2014, 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/pjs