

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JAMES R BOARDMAN
LOT #3 SW
700 – 41ST AVE DR
CEDAR RAPIDS IA 52404-5050

WHIRLING WATERS INC
1709 – 2ND ST
CORALVILLE IA 52241

Appeal Number: 06A-UI-03761-DWT
OC: 03/12/06 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Whirling Waters, Inc. (employer) appealed a representative's March 27, 2006 decision (reference 01) that concluded James R. Boardman (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was held subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2006. The claimant participated in the hearing. The employer responded to the hearing notice and was called for the hearing. The employer was not available and a message was left on the employer's answering machine to contact the Appeals Section if the employer wanted to participate in the hearing. The employer did not contact the Appeals Section again. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in late September 2005. The employer hired the claimant to work as a full-time sales person. When the employer hired the claimant, the employer knew the claimant attended college classes in the evening. In early 2006, the claimant began working a new position in service management. The claimant started training for this position and implemented some changes with the employer's authorization. In January the claimant was not aware of any problems the employer had with his work performance.

In February 2006, the claimant started getting behind on some of his paperwork because some employees would not follow the new procedures. The employer told the claimant that if he noticed a problem with an employee, he was to talk to them first. If he did not notice any improvement, the employer would then talk to and reprimand the employee.

On March 4, the claimant scheduled service calls for Monday, March 6. According to the paperwork he had received, there was only one delivery to be made Monday morning. The rest of the work on March 6 consisted of service calls. When the claimant reported to work on Monday, March 6, he learned there were a total of three deliveries to be made that day. The employer became upset with the claimant when he had not scheduled the three deliveries to be made that day. Ultimately, the employer told the claimant he could leave work at 11:00 a.m. that day. At that time the employer indicated that maybe the claimant was not the right person for the service management job and the employer and claimant would talk about him returning to work in sales again. The claimant had no problems returning to a sales position.

The employer was not ready to talk to the claimant about working again as a sales person until March 8. On March 8, the employer told the claimant returning to work as a sales person was not going to work out because of his night classes. The claimant's employment ended on March 6.

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 may have had compelling business reasons for discharging the claimant. The evidence does not, however, establish that the claimant committed work-connected misconduct. As of March 12, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 27, 2006 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of March 12, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kkf