

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY J SCHENCK
Claimant

APPEAL NO: 12A-UI-02872-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RCHP – OTTUMWA INC
Employer

OC: 01/22/12
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's March 14, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged reasons that do not constitute a current act of work-connected misconduct. The claimant participated in the hearing. Janey Houston, the employment coordinator, and Cecile Van Winkle 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 a current act of work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in September 2009. He worked full time as the director of Imaging in the Cancer Department.

Prior to January 20, 2012, the claimant had no understanding his co-workers or supervisors were offended by some comments he made at work or that his job was in jeopardy. He did not know that some employees talked to Van Winkle about comments the claimant made. Even though employees were encouraged to report comments they considered inappropriate or offensive, this was not done.

In early January 2012, the human resource director started an investigation and asked employees about any inappropriate comment the claimant made. The employer's witnesses did not know why the investigation started. After the human resource director asked Van Winkle about any issues with the claimant, she reported some December 28, 2011 comments the claimant made about marital problems a relative had. Van Winkle did not consider these comments appropriate on the day a potential employee interviewed for a job. The employer learned about a variety of comments employees considered inappropriate at work. The human resource director completed her investigation on January 19, 2012.

The employer informed the claimant on January 20, 2012, he was discharged because the employer concluded his staff did not respect him after it was reported by his staff that he made inappropriate comments. The employer did not believe the claimant was a good leader for the employer. Even though the claimant asked for specific inappropriate comments he allegedly made, the employer did not provide him with any specific information.

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).

The employer established business reasons for discharging the claimant. The employer's reliance on unsupported hearsay information from unidentified employees cannot be given much, if any credibility. Merely asserting the claimant made inappropriate comments without identifying the employee who reported the incident and the date of the incident does not establish that the claimant committed a current act of work-connected misconduct. The December 28 comment about a relative's marital problems that Van Winkle heard does not establish work-connected misconduct or even a current act.

The employer did not establish that the claimant committed work-connected misconduct or even that he made current inappropriate comments. As of January 22, 2012, the claimant is qualified to receive benefits.

DECISION:

The representative's March 14, 2012 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of January 22, 2012, 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