

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L STUEVE

Claimant

APPEAL NO: 09A-UI-05081 -DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 03/01/09

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's March 19, 2009 decision (reference 01) that concluded David L. Stueve (claimant) was qualified to receive benefits, and the employer's account was 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 28, 2009. The claimant participated in the hearing. The employer responded to the hearing notice and provided a phone number of the witness to call for the hearing. This number was called more than once, but no one answered the phone. During the hearing, the employer did not contact the Appeals Section to participate in the hearing. 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 on May 10, 2008. The claimant worked as a full-time first assistant manager.

In early February 2009, M., the supervisor talked to the claimant about some absences. After the claimant explained the personal issues he had been going through the last few weeks and that he had to move to another house, the supervisor appeared to understand why the claimant had been absent. After talking with M. the claimant had no understanding his job was in jeopardy.

When M.K. talked to the claimant about an \$87.00 cash shortage, the claimant asked the employer to review video tape in an attempt to discover how the shortage occurred. The claimant told the employer he had not taken any money from the employer. As far as the claimant knew, M.K. did not review the video tape and nothing more was said about the cash shortage.

The claimant was in the process of moving the weekend of February 21-22. The U-haul trailer he was using broke down in Fremont, Nebraska. As soon as the claimant realized he would not be able to work his shift on Sunday morning, February 22, he tried to call M.K. The claimant was unable to reach M.K. The claimant then called the second assistant manager and asked if she would cover the time he was scheduled to work on February 22. The second assistant manager agreed to cover the claimant's shift and did. The claimant did not get home until late Sunday night.

The claimant was not scheduled to work until Tuesday, February 24. On February 23, M.K. called the claimant and discharged him. The employer told the claimant he was discharged for failing to notify M.K. that he was unable to work as scheduled on February 22.

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 business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally failed to work as scheduled on February 22. After the U-haul he was using broke down, the claimant unsuccessfully attempted to contact M.K. When the claimant was unable to contact M.K., he notified the second assistant manager who agreed to cover his shift. Based on the facts presented during the hearing, the claimant did not commit work-connected misconduct. As of March 1, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's March 19, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

March 1, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the employer.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css