

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT A JOLLEY**  
Claimant

**APPEAL NO: 09A-UI-15293-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MILLARD REFRIGERATED SERVICES INC**  
Employer

**OC: 09/06/09**  
**Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The employer appealed a representative's October 1, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for an incident that does amount to a current act of work-connected misconduct. A telephone hearing was held on November 12, 2009. The claimant participated in the hearing. Sara Caross, Tim Ash and Todd Rogers, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 a current act of work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 1, 2002. The claimant worked as a full-time inventory manager. When Rogers became the general manager in early March 2009, he became the claimant's supervisor.

As a manager, the claimant met with other managers in closed door manager meetings. In the meetings, managers talked freely about employees whose jobs were in jeopardy for a variety of reasons. The claimant understood he could not talk about an employee's personal information or problems with another employee. During one of the meetings, Rogers talked about an office employee's attendance issues and how her attendance could lead to her discharge. When Bradley started having attendance issues, the claimant talked to him as a supervisor and friend. The claimant told him he needed to perform all his work satisfactorily and report to work as scheduled because other employees' jobs were in jeopardy because of attendance issues. The claimant did not identify any employee by name who had attendance issues.

Later, Bradley and an employee who had attendance issues socialized after work hours. When she mentioned she had attendance issues, Bradley told her about the claimant's comments that

some employees' jobs were in jeopardy because of attendance issues and that the employer was looking for any reason to discharge employees. This employee later talked to the office manager about her conversation with Bradley. The office manager then reported to Rogers that the claimant told Bradley personal information about an employee.

A few days later during an August 27 closed manager's meeting, Rogers asked the claimant if he told Bradley a specific employee had attendance issues when the claimant talked to Bradley about his own attendance issues. Although the claimant had not mentioned any specific employees Rogers understood from the office manager that the claimant identified the employee with attendance issues when he talked to Bradley. On August 27, the employer discharged the claimant for violating the employer's policy by providing personal information about an employee to another employee.

#### **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 section 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).

This case revolves around a credibility issue. If the claimant told Bradley the employer disciplined an identified employee for attendance issues, the claimant committed work-connected misconduct by providing personal information to another employee. However, a preponderance of the credible evidence does not establish that the claimant identified to Bradley any employee who had attendance issues. The testimony of the claimant and Bradley's testimony is more credible than the employer's reliance on unsupported third-hand hearsay information from employees who did not testify at the hearing. The credible evidence does not support the employer's assertion that the claimant gave Bradley personal information about another employee. Therefore, the claimant did not commit work-connected misconduct. The claimant is eligible to receive benefits as of September 6, 2009.

(If the claimant had specifically identified employees who the employer disciplined for attendance issues and Rogers just learned about this on August 25, the fact this incident

occurred months ago would not protect a claimant under the current act regulation. Since Rogers just learned about the incident and took immediate action, the employer would have discharged the claimant for a current act of work-connected misconduct.)

**DECISION:**

The representative's October 1, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of September 6, 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 claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs