

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J BOSIER
Claimant

APPEAL NO: 11A-UI-03556-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOUBIN MUFFLER SHOP INC
Employer

OC: 08/30/09

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Boubin Muffler Shop, Inc. (employer) appealed a representative's March 17, 2011 decision (reference 02) that concluded Joshua J. Bosier (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 12, 2011. The claimant participated in the hearing. Shari Klindt appeared on the employer's behalf and presented testimony from one other witness, Marvin Hosch. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on December 30, 2010. He worked full time as service manager at the employer's Coralville, Iowa shop. His last day of work was February 12, 2011. The employer discharged him on that date. The reason asserted for the discharge was that the employer was dissatisfied with the claimant's job performance, particularly, a concern that he lacked respect for authority.

The claimant had been hired by Mr. Hosch, the regional manager, but after the claimant began working, friction quickly arose between the claimant and the store manager, Ms. Klindt. She believed he used poor judgment in how he handled a few situations, and he felt she was trying to make him leave. The final incidents which led to Ms. Klindt's decision to discharge him on February 12 were that the claimant had failed to return a self-review he had been given to complete on February 5, although there was no deadline specified for its return, and further that he had not gone through the chain of command by going through the store manager when he had given a letter to Mr. Hosch on February 8 asking to be transferred to a different store.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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 to be deemed misconduct within the meaning of the statute. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reasons the employer discharged the claimant were his failing to turn in the self-review and his asking the regional manager rather than the store manager for a transfer. Under the circumstances of this case, the claimant's handling of these issues was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or was a good faith error in judgment or discretion; the employer has not established that the claimant's actions were substantial misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's March 17, 2011 decision (reference 02) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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