

**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**

**BRIAN D CARBERRY  
2405 E GRAND  
DES MOINES IA 50317**

**CAMERON MITCHELL INC  
1588 NE 58<sup>TH</sup> AVE  
DES MOINES IA 50312 1622**

**Appeal Number: 05A-UI-06988-DWT  
OC: 06/12/05 R: 02  
Claimant: Appellant (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Brian D. Carberry (claimant) appealed a representative's June 30, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Cameron Mitchell, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 26, 2005. The claimant participated in the hearing with his witness, Gary Cameron. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. As a result, no one represented the employer. 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 claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked about two years for the employer. The claimant worked full-time. When Gary Cameron supervised the claimant, the claimant's job performance was satisfactory. Bill Cameron became the claimant's supervisor in early 2005. Bill Cameron was not satisfied with the claimant's work. On May 15, 2005, Bill told the claimant he was discharged.

Bill Cameron told his uncle, Gary, that he had discharged the claimant because he did not do the work that Bill wanted him to do. Bill also asked Gary to talk to the claimant to see if he would come back to work. Gary did not talk to the claimant about returning to work after Bill had discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The facts establish the employer discharged the claimant on May 18, 2005. If the employer had not discharged the claimant, the claimant would have continued his employment.

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 on May 15, 2005. The facts do not establish that the claimant committed work-connected misconduct. The fact that Bill wanted Gary to talk to the claimant about coming back to work shortly after May 15, 2005, supports the conclusion that the claimant did not commit work-connected misconduct. As of June 12, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's June 30, 2005 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for reasons that do not constitute work-connected misconduct. Therefore, as of June 12, 2005, 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/kjw