

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL S MICHAEL
Claimant

APPEAL NO. 07A-UI-03982-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED PARCEL SERVICE
Employer

**OC: 03/18/ R: 02
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 4, 2007, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 2, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Scott Schmitz participated in the hearing on behalf of the employer. Exhibits 1, 2, 3, A, and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a package driver from July 12, 1990, to March 19, 2007.

In July 2005, the claimant entered in-patient rehabilitation treatment for alcohol abuse, which required him to be on a leave of absence from employment. Under the union contract, the claimant was required to enter into a rehabilitation agreement as a condition of continued employment. The claimant signed the agreement on August 17, 2005, which required him to submit to alcohol and drug testing as determined by the substance abuse professional (SAP), to remain alcohol and drug free upon his return to work, and to successfully complete the aftercare program outlined by the SAP.

The claimant completed the treatment outlined in the aftercare program and was tested every month for alcohol and drugs and did not fail any tests. On August 10, 2006, the SAP certified to the employer that claimant had successfully completed all the requirement of the aftercare program.

On March 13, 2007, the claimant was arrested for operating a vehicle while intoxicated (OWI). The incident took place while the claimant was off duty and while he was in his personal vehicle. The claimant's driving privileges were not suspended or revoked. There is no evidence that the

claimant missed work because of his OWI arrest. The claimant has pleaded not guilty to the OWI.

On March 19, 2007, the employer discharged the claimant for failing to comply with his aftercare treatment plan as a result of his OWI arrest.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The employer discharged the claimant for failing to comply with the aftercare treatment plan. Yet, the evidence is clear that the claimant had completed his aftercare treatment plan after a doctor certified that he had successfully met the requirement of the plan.

The employer next asserts the arrest for OWI violated the provision of the alcohol and drug rehabilitation agreement that required him to be "alcohol and drug-free" upon his return to work. The employer takes the position that this provision would prevent the claimant from consuming alcohol or using drugs throughout his employment. The problem with the provision is that it clearly would extend beyond what would be considered misconduct connected with the employer. There is no evidence that the claimant ever reported to work impaired by alcohol or drugs. The only work-connected problem was being allowed off work for in-patient treatment. Under the circumstances, if the claimant is being discharged for simply consuming alcohol while he was off duty, no work-connected misconduct has been proven. It is clear then if the claimant is subject to disqualification, it is because he was intoxicated while driving. The problem with that is that the employer discharged the claimant after he was arrested, not after he was convicted. The employer did not offer proof beyond the ticket that the claimant was intoxicated while driving. The claimant has pleaded not guilty to the offense. The arrest is simply a charge, not proof that the claimant committed the act.

No willful and substantial work-connected misconduct has been proven in this case. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

DECISION:

The unemployment insurance decision dated April 4, 2007, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs