

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY A STRANG
Claimant

APPEAL NO: 10A-UI-15678-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HELZBERGS DIAMOND SHOPS INC
Employer

OC: 10/03/10
Claimant: Respondent (1)

Iowa Code 96.5-2-a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 8, 2010 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Stephanie Lant, the store manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The employer hired the claimant to work as a full time sales associate on July 21, 2010. Lant supervised the claimant.

During his employment, the employer gave the claimant several warnings. On September 2, the claimant received a warning for failing to attend a mandatory August 28 meeting. Lant sent text messages to employees 48 hours in advance to let employees know about the August 28 mandatory meeting. The claimant did not go to the mandatory meeting or notify the employer that he was unable to attend because he did not know about the meeting. The September 2 written warning also addressed the claimant's unprofessional behavior. The warning informed the claimant that he could not discuss with other employees his September 2 corrective action. The employer gave the claimant a final written warning on September 17 for unprofessional behavior.

The claimant was scheduled to work on September 20. The claimant did not call or report to work on September 20 because he did not realize he was scheduled to work. On Friday, September 17, the claimant looked at the schedule and understood he was not scheduled to work Monday or Tuesday, September 20 or 21. When the claimant reported to work on September 22, the employer discharged him. Since the claimant had already received a written warning and final written warning, the employer discharged him in accordance with the employer's progressive disciplinary policy.

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 established business reasons for discharging the claimant. Since the claimant did not have attendance problems, his failure to call or report to work on September 20 does not establish work-connected misconduct. The claimant's testimony that he did not realize he was scheduled to work that day is credible. Even if he had not read the schedule correctly on Friday, September 17, the facts do not establish that he intentionally failed to work as scheduled. The claimant did not commit work-connected misconduct. Therefore, as of October 3, 2010, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's November 8, 2010 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit a current act of work-connected misconduct. As of October 3, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During his current benefit year, the employer's count will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css