

**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**

**Appeal Number: 04A-UI-04967-DWT  
OC 04/04/04 R 03  
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.

**FRANCIS NICK E SCHULTE  
1512 – 1<sup>ST</sup> ST NW  
CEDAR RAPIDS IA 52405**

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 are 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.

**NATIONAL CZECH & SLOVAK  
MUSEUM & LIBRARY  
30 – 16<sup>TH</sup> AVE SW  
CEDAR RAPIDS IA 52404-5904**

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Francis Nick E. Schulte (claimant) appealed a representative's April 22, 2004 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of National Czech & Slovak Museum & Library (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2004. The claimant participated in the hearing. Gail Naughton, the president and chief executive officer, 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 work-connected misconduct?

#### FINDINGS OF FACT:

The claimant started working for the employer on April 16, 1997. He worked full time as a facilities director. Naughton has been his supervisor since September 2002.

During his employment, other employees complained about the claimant leaving inside doors unlocked and lights on when they got to work in the morning. The claimant understood that while he was working he could leave inside doors open and lights on so he could do his job more efficiently. The claimant understood that when he left for the night, he needed to make sure the inside doors were locked and lights were turned off. When the claimant went to work in another building or had to run an errand he would leave doors open and lights on but would set the security alarm while he was away from a building. The claimant understood any employee who worked at night had the responsibility of locking doors and turning off lights before the employee left. The claimant noticed other employees violated the employer's security policy during the last two years of his employment. The claimant did not know if any of these employees had been disciplined for violating the employer's security policy.

Although employees complained about the claimant's failure to lock inside doors and were not satisfied with his job performance, Naughton tried to work with the claimant. At times Naughton talked to the claimant about making sure he followed the employer's security policy. The claimant did not receive any written warnings. The claimant knew other employees complained about him and concluded they did not want to work with him.

On March 27, 2004, the claimant went to work before 6:22 p.m. At 6:22 p.m. he set the security alarm so no one could get into the building. He planned to come back to work after he had dinner and took care of his dog. Since he planned to come back, he left inside doors open and lights on. When the claimant returned sometime after 7:30 p.m. he saw that the curator was in the building. The claimant did not go back inside the building to work because he never works when another employee is working in the building. The claimant knew the curator would lock the doors and turn off the lights before she left. The claimant decided he would do the work he planned to do that night the next morning. The claimant did not return to work until 8:55 a.m. on March 28.

The employer concluded the claimant's violation of the employer's security policy for over 12 hours could not be overlooked. The employer discharged the claimant on March 30, 2004 because he violated the employer's security 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. The facts, however, indicate the employer did not warn him that his job was in jeopardy if he left doors unlocked when he was cleaning, but left the building for a while. The claimant always engaged the security system so the buildings were locked to the public. Employees, however, complained because if someone from the outside breached the security system they had unlimited access to a many rooms in the facility.

When the claimant left work for dinner on March 27 he planned to return and do some work. The claimant reasonably concluded the curator, who was in the building working when the claimant returned, would lock the doors and turn off lights before she left the building. The claimant exercised poor judgment when he did not go back into the building sometime after 7:30 p.m. to lock the doors he had left open or to call the curator to tell her he had decided he would not do his work when she was in the building and ask her to secure the building before she left. Poor judgment does not rise to the level of work-connected misconduct. Under the facts of this case, the claimant did not intentionally or substantially disregard the employer's interests. He did not commit work-connected misconduct. As of April 4, 2004, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's April 22, 2004 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 4, 2004, 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/b