

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL L WHITFORD**  
Claimant

**APPEAL NO: 12A-UI-09765-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAR APPLIANCE INC**  
Employer

**OC: 07/08/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's August 6, 2012 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated in the hearing with his witnesses, James Hooper and Courtney Ellison. Patrick Hesel and Shainna McKinney appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in March 2012. He worked as a full-time delivery person/installer.

When the claimant started working, Hooper trained him. The claimant understood that if he forgot to punch in or out, he was to write the time he reported to work or left on his timecard. The claimant remembers the employer talking about lifting techniques, but he does not recall anyone talking about wearing safety gloves.

In mid-June, the claimant asked Connie Hesel if he could borrow the employer's GPS system over the weekend because he was going to Minneapolis. The claimant understood Connie authorized him to use the employer's GPS system. She also gave the claimant her Triple A card in case he had any problems in Minneapolis. The claimant returned the GPS system and her Triple A card when he returned from Minneapolis.

The employer has a cell phone for employees to use to contact customers. For a short time the claimant used the employer's cell phone as his personal phone. He took it home. In early July, Connie talked to the claimant about the employer's cell phone. In June, the minutes used

exceeded the amount in the employer's plan. After early July, the employer did not allow employees to take the employer's cell phone home after work. The claimant also agreed to pay for any excessive minutes he used over the employer's plan. Connie also talked to the claimant about the time he wrote on his timecard. The claimant understood the employer had to approve the time he wrote when he forgot to punch in or out of work.

On July 5, Patrick Hesper worked with the claimant. Patrick Hesper warned the claimant that he needed to use the proper equipment when transferring appliances into and out of a customer's home. The employer did not want to damage the appliance or the customer's property. More importantly, the employer did not want an employee to get injured. On July 5 Patrick Hesper told the claimant that his work conduct was not acceptable. The week before the claimant forgot to take a vent hose to a customer's home and then on July had not transferred an appliance properly. Hesper warned the claimant that if he continued to do his job improperly, the employer would immediately discharge him.

On July 11, the claimant went to work and loaded appliances and parts that were his assignment list. The claimant had a helper that day that also had an assignment of appliances and parts to load for the two of them to deliver. Even though the claimant supervised his helper, he assumed his helper loaded everything on the delivery truck that needed to be loaded.

Patrick Hesper discharged the claimant after learning the claimant had to go back to the store to pick up an appliance that his helper had not loaded that morning. This cost the employer \$100.00. On July 11, the employer discharged the claimant for again failing to do the job the employer hired him to do. When the employer discharged the claimant, the reason for the discharge was not given but the claimant knew it was because an appliance had not been loaded on the truck earlier that day.

#### **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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. The evidence does not establish that the claimant stole company property, intentionally falsified his timecard or understood that he could not use the employer's cell phone as his personal phone. After the employer talked to the claimant about the minutes he used that exceeded the employer's plan, he agreed to pay for the extra charges and understood this issue had been resolved.

In June the employer gave the claimant a raise. After the claimant received a raise, the employer noticed he was not following the employer's safety procedures and forgot parts he needed for customers. As of July 5, the claimant should have known his job was jeopardy based on the verbal warning Patrick Hesper gave him.

On July 11, the claimant used poor judgment and may have been negligent when did not double check his helper's list to make sure everything needed that day was loaded. The claimant did not know an appliance had not been loaded and had to go back to the store to get it. Since Hesper told the claimant on July 5 his job was in jeopardy, on July 11, the employer discharged the claimant for his inability to correctly perform his job. In this case he did not load everything he needed for deliveries that day. Poor judgment and/or inadvertent negligence do not rise to the level of work-connected misconduct. Therefore, as of July 8, 2012, the claimant is qualified to receive benefits.

**DECISION:**

The representative's August 6, 2012 determination (reference 02) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of July 8, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css