

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW A LATIMER
Claimant

APPEAL NO. 09A-UI-05401-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION WAREHOUSE CO LTD
Employer

OC: 03/08/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Matthew A. Latimer (claimant) appealed a representative's March 27, 2009 decision (reference 01) that concluded he was not qualified to receive benefits and the account of Action Warehouse Company Ltd. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. An in-person hearing was held on May 6, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Bob Grett, the warehouse foreman, 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 August 16, 2004. The claimant worked as a full-time warehouse laborer. Grett supervised the claimant.

During the claimant's employment, he received suspensions for loafing at work. On October 7, 2007, the employer gave the claimant a suspension for loafing at work instead of tearing down pallets. On April 15, 2008, the employer suspended the claimant for loafing at work when he did not work fast enough to complete a job.

The claimant knew and understood the employer did not allow employees to have cell phones on the warehouse floor. The claimant had his cell phone with him on the warehouse floor and sent text messages during work hours. Although a supervisor never saw the claimant use his cell phone at work, the employer learned the claimant had been sending text messages while working to C.W. On February 20, 2009, the employer suspended the claimant one day for violating the employer's cell phone policy. The written warning informed the claimant this was his last chance. The employer warned the claimant he would be discharged if he was again caught with his cell phone on the warehouse floor or for loafing or wasting time. The claimant understood his job was in jeopardy.

During the weekend, the claimant talked to C. W. The claimant understood C.W. was also suspended one day. During the weekend conversation, the claimant learned that while he would serve his one-day suspension on Monday, February 23, C.W. would serve his suspension on Wednesday, February 25.

A co-worker, M.L. rode to work with either C.W. or the claimant. On Tuesday, February 24, the claimant saw M.L. and asked if he needed a ride to work the next day because C.W. may be suspended the next day. The claimant made this comment while he was loading a truck and M.L. walked by. Instead of waiting until the end of the shift, M.L. immediately went to the office to ask C.W. if he was able to give M.L. a ride to work the next day. Grett saw M.L. and told him this was a false rumor and that he needed to get back to work.

On February 25, 2009, the employer discharged the claimant. The employer informed the claimant he was discharged for loafing and failure to show mutual respect the day before.

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).

Based on the number of times the employer had already suspended the claimant for loafing and the claimant's attitude regarding cell phone usage – knowingly violating the employer's cell phone policy – the employer had justifiable business reasons for discharging the claimant. The employer may have been frustrated because the claimant would not always follow the employer's policy.

On February 20, the employer, however, warned the claimant he would be discharged the next time he loafed or had his cell phone on the floor. On February 24, the employer considered the claimant's comment to M.L. about riding to work with the claimant the next day because C.W. may be suspended as loafing and a failure to show C.W. mutual respect. The evidence does not establish that the claimant was loafing on February 24. The claimant's question or comment to M.L. does not amount to loafing. The claimant had no control over M.L.'s action when he went to the office, which would amount to loafing while on the clock. Since the claimant reasonably believed C.W. was going to be suspended on February 25, the claimant did not

intentionally disregard the employer's mutual respect policy. The facts do not establish the claimant intended to start any false rumor about C.W. If C.W.'s suspension had been changed to a written warning, the claimant did not know this change occurred. The facts do not establish that the claimant committed work-connected misconduct. Since the employer only suspended the claimant for violating the employer's cell phone policy, a suspension cannot be turned into a discharge. As of March 8, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's March 27, 2009 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of March 8, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css