

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LANCE R WOGOMON
Claimant

APPEAL NO: 09A-UI-15389-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TERRY FRAZER'S RV CENTER INC
Employer

OC: 08/23/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's September 30, 2009 decision (reference 01) that concluded the claimant was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. A telephone hearing was held on November 13, 2009. The claimant participated in the hearing. William Fowler, the service manager, and Terry Frazer, the owner, 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 November 21, 2005. The claimant worked as a full-time technician. Although the claimant had attendance issues, the employer did not discharge him for this problem.

On May 29, 2009, the claimant received a written warning for work performance issues – wired a recalled refrigerator incorrectly, put in a battery that was not useable and hooked up a faucet incorrectly. The warning informed the claimant that further problems of a similar nature could result in his termination.

On July 22, the claimant had to find a gas leak. To find the leak the claimant used the soap and bubble method and an electronic sniffer. After the claimant repaired the gas leak, he made a comment that he could have found the leak easier if he had had used his cigarette lighter. The claimant did not use his cigarette lighter to find the gas leak. Fowler learned about the comment and understood the claimant had used his cigarette lighter, but did not say anything to the claimant or give him a written warning for this comment.

On August 5, the claimant was injured when he was trying to re-tension a spring on an awning that was not working properly. The claimant had two or three people helping him with this

project. After one employee was told to work on another job, the rest of the employees could not hold the awning. The spring on the awning then sprung and hit the claimant. The claimant went home early injured, but he did not have any bones broken. The claimant disagreed with the employer's assertion that he should have pinned down the awning before he began working on it. Although the employer did not believe the claimant worked on the awning in a safe way, the employer did not give the claimant a verbal or written warning for this incident.

ON August 22, Fowler told the claimant to wire a brake control. This job was on a new car and the claimant did not know how to correctly wire the brake control. The claimant told Fowler he had problems with this assignment and did not know what he was doing. When Fowler went to finish wiring the brake control, the claimant had not wired the brake control correctly.

On August 22, 2009, the employer discharged the claimant because of his unsafe work ethics or specifically because of problems on May 29, July 22, August 5 and 22 that were described above. Although the claimant understood he was discharged for lack of work, the employer hired two employees since he was discharged.

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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. On May 29, after he received the written warning, the claimant knew or should have known his job was in jeopardy if he kept making mistakes. The claimant did not receive any more written or verbal warnings after May 29, 2009.

The employer's assertion that the claimant used his cigarette lighter to check out a gas leak is not supported by the evidence. Instead, the facts indicate the claimant made a comment to this effect, but he used the proper techniques to find the gas leak. If the claimant had used his cigarette lighter, there is no excuse for failing to give him a written warning or discharging him at

that time. On August 5, the claimant was injured, but the facts do not establish that he was negligent or careless to the extent that he committed work-connected misconduct. The injury did not occur until an employee who was helping the claimant left to work on another job. At the most, the claimant used poor judgment on August 5, but did not commit work-connected misconduct.

On August 22, the evidence establishes the claimant did not wire a brake control correctly, but he told Fowler he did not know how to do this job because he was working on a new vehicle. A claimant's inability to perform a job satisfactorily does not rise to the level of work-connected misconduct. Since the claimant informed Fowler that he did not know what he was doing on this job, the evidence does not establish that the claimant intentionally failed to perform the job satisfactorily and he did not disregard the employer's interests. Since the claimant did not commit a current act of work-connected misconduct he is qualified to receive benefits as of August 23, 2009.

DECISION:

The representative's September 30, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of August 23, 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/pjs