

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

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Appeal Number: 04A-UI-12211-BT
OC: 10/17/04 R: 04
Claimant: Appellant (1)

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, 4th 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.

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 is 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96 5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kevin Orton (claimant) appealed an unemployment insurance decision dated November 5, 2004, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Farm King Supply, Inc. (employer) for work-connected misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2004. The claimant participated in the hearing with Attorney R. L. Fehseke. The claimant's father was present but did not offer testimony. The employer participated through Ms. Robby Ford, Manager; Thomas Newbury, Area Manager; Sandy Kimmel, Sales Clerk; and Attorney Tony Ashenhurst. What should have been marked as Employer's Exhibit One was mistakenly marked as Claimant's Exhibit A, and this document was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time janitor from November 15, 1993 through October 13, 2004. He was discharged for failure to follow directives and insubordination resulting from his conduct on October 12, 2004. The claimant has a disability of clinical depression and lives in a shelter, where he is assigned a job coach. The employer had never given the claimant any previous formal warnings but had called the claimant's job coach several times as a result of problems with the claimant.

On October 12, 2004, the manager went outside the front doors where the claimant was standing talking to two customers. The manager heard the claimant telling the customers that the tractor they were looking at was not good quality. The claimant told the customers they would not be able to find parts for the tractor. When the customers went inside, the manager told the claimant he could not say the employer's products were no good. The claimant argued with the manager and said he could state any opinion he wanted and she (the manager) could not tell him what to do. The claimant continued to argue so the manager walked away and as she left, the claimant called her a bitch. The manager immediately called the claimant's job coach and told him she wanted the claimant off the property. The manager contacted the corporate office and the decision was made to terminate the claimant on the following day.

Less than one week earlier, the area manager heard the claimant telling customers he would not buy that "piece of shit" tractor and that it does not start "half the time." The claimant further stated that he did not know why the employer buys "crap like that." The manager did not take action on that incident as she did not witness it herself.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code Section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
 - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has

the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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 claimant was discharged for insubordination and ignoring the employer's directives. He was confronted on October 12, 2004, for making disparaging remarks about the employer's products. He had made similar comments to another customer approximately one week prior to this incident. When confronted and directed not to make such comments, he argued that he could say anything he wanted and that his manager could not tell him what to do. The claimant further exacerbated the situation by calling the manager a "bitch." Although the claimant denies any wrongdoing, his testimony supported the evidence provided by the employer. His initial conduct was detrimental to the employer's interests and his consequent behavior demonstrated unacceptable insubordination. His actions cannot be considered ordinary negligence in an isolated incident or a good faith error of judgment. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated November 5, 2004, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

sdb/kjf