

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE W LOPEZ
Claimant

APPEAL NO. 14A-UI-12126-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RYDER INTEGRATED LOGISTICS INC
Employer

OC: 07/27/14
Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ryder Integrated Logistics (employer) appealed a representative's November 14, 2014, decision (reference 02) that concluded Jose Lopez (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 10, 2014. The claimant was represented by Charles Showalter, Attorney at Law, and participated personally. The employer was represented by Ralph Davis, Hearings Representative, and participated by Jordan Van Ervelde, Human Representative; Chris Patty, Transportation Manager; and Darlean Crawford, Dispatch Clerk. The claimant offered and Exhibit A was received into evidence. The hearing was not completed on December 10, 2014. Both parties and representatives agreed to schedule the hearing for completion on December 17, 2014. On December 17, 2014, Ralph Davis informed the administrative law judge that the employer and the hearing representative informed the administrative law judge that the employer and he did not wish to participate in the completion of the hearing on December 17, 2014. The hearing continued to completion on December 17, 2014. The claimant was represented by Charles Showalter, Attorney at Law, and participated personally.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

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 hired on July 16, 2014, as a full-time driver. The claimant signed for receipt of the employer's handbook on July 17, 2014. On August 22, 26, 27, 2014, the employer issued the claimant written warnings for tardiness. On August 26, 2014, the employer issued the claimant a written warning for talking to a human resources person about the claimant's direct supervisor. The claimant had complained to his supervisor and thought his supervisor was not handling safety violations correctly. On October 3, 2014, the employer issued the claimant a written warning for a safety violation. Also on October 3, 2014, the employer issued the claimant a written warning for inspecting his equipment too thoroughly.

The employer notified the claimant each time that further infractions could result in termination from employment.

On October 6, 2014, the claimant was harassed by another driver. He locked himself in the cab of the truck and called the transportation manager. The other driver was yelling and raising his hands in the air at the claimant. The transportation manager told the claimant he heard the other driver and told the claimant he could come in at the end of his shift. The claimant called law enforcement and the customer's compliance police.

The following day, October 7, 2014, the claimant was still shaken. The claimant had not decided what to do about working for the company and wanted information about maybe giving his two week notice of quitting. He asked to speak with the transportation manager alone. The manager said he was too busy to go into a private room. The claimant knelt down next to the manager and wrote on a paper "two week notice?". The manager said so others could hear, "Oh you want your two week notice." He then turned to the calendar and pointed to a date. The claimant told the manager he was only asking questions about it. The manager told the claimant to get the form from another employee. The manager sent an email to another employee saying the claimant was quitting. Other employees asked the claimant about his quitting. He told them he did not want to quit. He was only thinking about it. On October 7, 2014, the manager met with the claimant. The claimant said he had not made his decision. The manager took his badges and ended his employment.

The claimant filed for unemployment insurance benefits with an effective date of July 27, 2014. He received \$2,192.00 in benefits after the separation from employment. The employer participated personally at the fact-finding interview on November 13, 2014, by Jordan Van Ersvelde.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work with the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The claimant did not form the intent to voluntarily leave work. Therefore, the separation was involuntary.

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's November 14, 2014, decision (reference 02) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs