

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY D STEPHENSON
Claimant

APPEAL NO: 08A-UI-00135-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIKE BROOKS INC
Employer

OC: 12/09/07 R: 12
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Terry D. Stephenson (claimant) appealed a representative's December 27, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Mike Brooks, Inc. (employer) would not be charged because he had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2008. The claimant participated in the hearing. The employer responded to the hearing notice, but the employer's witness was not available for the hearing. Based on the evidence, the arguments of the claimant, 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 in October 2006. The claimant worked as a full-time shuttle driver in Kansas City. The claimant lives about 30 miles from the work site.

On December 6, the Kansas City area experienced an ice storm. The claimant called his supervisor prior to his shift to let the employer know he was unable to work that day. The claimant told the employer he did not want to drive (work) in an ice storm. The claimant's supervisor tried to convince the claimant to report to work, but the claimant declined. Five to ten minutes later, the claimant received a call from the mechanic asking the claimant if he wanted a ride to work. The claimant again declined because he did not believe it was safe for him to drive the shuttle that day. The claimant did not go to work that day.

The next day, the employer informed the claimant he was discharged because he had not reported to work the day before. Prior to December 6, the claimant had no idea his job was in jeopardy. Later, the claimant learned another driver, in addition to the claimant, had not reported to work on December 6, 2007.

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 section 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 evidence presented during the hearing, the claimant did not commit work-connected misconduct. Even though the claimant did not go to work one day, he notified the employer that he could not work in an ice storm. While the employer may consider this absence unexcused, the fact the claimant notified the employer demonstrates that he did not intentionally disregard the employer's interests. As of December 9, 2007, the claimant is qualified to receive benefits.

DECISION:

The representative's December 27, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of December 9, 2007, 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