

**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**

**TERI L TUOMALA
PO BOX 328
FAIRFAX IA 52228-0328**

**WEST SIDE TRANSPORT INC
4201 – 16TH AVE SW
PO BOX 9129
CEDAR RAPIDS IA 52409-9120**

**Appeal Number: 06A-UI-07887-CT
OC: 07/02/05 R: 03
Claimant: Respondent (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:

West Side Transport, Inc. filed an appeal from a representative's decision dated July 27, 2006, reference 02, which held that no disqualification would be imposed regarding Teri Tuomala's separation from employment. After due notice was issued, a hearing was held by telephone on August 22, 2006. Ms. Tuomala participated personally and Exhibits A and B were admitted on her behalf. The employer participated by Will Miers, Executive Director of Human Resources; Mike Hershberger, Vice President of Operations; Kirk Cleppe, Customer Service Manager; and Barb Teply, Human Resources Specialist. Exhibits One, Two, and Three were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Tuomala began working for West Side Transport, Inc. on May 13, 2003 as a full-time customer service representative. On June 7, 2006, she tendered her resignation because she was overwhelmed with work. Another employee had left the business and her work was distributed to others, including Ms. Tuomala. When she spoke to Kirk Cleppe about the resignation, he discussed some possible solutions to the problem. One possible solution was to transfer one of her accounts to another individual. Another possible solution was to hire another individual. However, no specific promises were made. Ms. Tuomala did rescind her resignation in writing.

On June 23, Ms. Tuomala again tendered her resignation to be effective July 7, 2006. She felt no changes had been made and the employer had not communicated any changes that were forthcoming. Her supervisor was on vacation when she resigned on June 23. The resignation was given to Mike Hershberger who did not indicate whether it was accepted or rejected. On June 26, Ms. Tuomala met with her supervisor. Mr. Cleppe indicated that things would get worked out. He did not directly say whether the resignation was accepted or declined. Ms. Tuomala left the meeting with the understanding that she would continue in the employment and that the employer stood ready to make changes that would relieve her workload.

On the morning of June 27, Ms. Tuomala sent an e-mail to Mr. Cleppe and Mr. Hershberger regarding her workload. She indicated that, "if I'm going to go forward here at West Side, I need something to give in my area!!" Mr. Hershberger responded to the e-mail by directing Mr. Cleppe to start the process of transitioning two accounts from Ms. Tuomala to another individual. No mention was made of Ms. Tuomala's resignation. Mr. Cleppe sent Ms. Tuomala an e-mail indicating they would get together that afternoon with another individual to start the process of relieving her of work. The e-mail made no mention of the resignation.

On the afternoon of June 27, Ms. Tuomala was notified that the employer was accepting her resignation. She removed her personal possessions and left the premises.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this matter is whether the separation should be considered a quit or a discharge. Although Ms. Tuomala submitted a resignation, she was led to believe she was being allowed to again rescind it. Her perception was based on communications with her supervisor. Mr. Cleppe discussed with her on June 26 the type of things that could be done to relieve her workload. The most significant factor is the e-mail Ms. Tuomala sent to Mr. Cleppe and Mr. Hershberger on June 27. Although her e-mail indicates she planned to remain on, neither Mr. Cleppe nor Mr. Hershberger responded to her statement about "going forward." Instead, they focused on relieving Ms. Tuomala of work as she requested. Mr. Cleppe overheard Ms. Tuomala talking to someone indicating she would be staying with West Side after all. He did not say anything to correct any misperception she may have had regarding her status. This factor, along with the failure to even mention the resignation in the June 27 e-mails, persuades the administrative law judge that Ms. Tuomala did reach at least a tacit understanding with Mr. Cleppe on June 26 that she would be remaining in the employment. In essence, she was allowed to withdraw the June 23 resignation.

It was the employer's decision that Ms. Tuomala would not be allowed to continue working. Therefore, the separation is considered a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Having taken the position that Ms. Tuomala quit, the employer did not offer evidence of any misconduct on her part. Inasmuch as she had never been disciplined for any matters, the administrative law judge must conclude that there was no misconduct on her part. Accordingly, no disqualification is imposed.

DECISION:

The representative's decision dated July 27, 2006, reference 02, is hereby affirmed. Ms. Tuomala was discharged but misconduct has not been established. Benefits are allowed, provided she satisfies all other conditions of eligibility.

cfc/cs