

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL A DEGRAFFENRIED
Claimant

APPEAL NO. 09A-UI-02812-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHWAY MOTOR XPRESS INC
Employer

OC: 12/07/08
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges To The Employer's Account

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 10, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 18, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with witnesses, Jeffrey Degraffenreid and Tamara Degraffenreid. Judy Larson participated in the hearing on behalf of the employer with a witness, Terri Pearson. After the hearing the claimant submitted a copy of his 2008 W-2 form from Reiss Excavation, LLC. The document is admitted as Exhibit A.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from October 17, 2006, to July 8, 2008. He was informed and understood that under the employer's drug and alcohol policy, he could be required to submit to a drug and alcohol test after sustaining a work-related injury and could be terminated for refusing to submit to a test.

On June 19, 2008, the claimant was delivering a load to a customer in Memphis, Tennessee. He was assaulted by two persons at the customer's location. One of the assailants hit the claimant's arm with a 2 x 4 board. He was able to get in his truck, but his arm was seriously injured and his knee was hurt, and he was only able to drive for a couple of miles before he had to stop. He contacted the police, his family, and the employer regarding what happened and later went to the hospital.

When he got to the hospital, he was given strong pain medication. The employer's workers' compensation manager instructed hospital staff to have the claimant provide a urine sample for testing purposes. When the nurse requested the claimant provide a sample for testing, he declined. The workers' compensation manager spoke to the claimant by phone and informed

him that his refusal to provide a sample would be the same as a positive test result and would subject him to termination. The claimant was not thinking clearly due to the medication he had been given and the injury he had sustained. He did not understand why he needed to take a drug and alcohol test after being assaulted.

The next day, the claimant offered to provide a sample for purposes of drug and alcohol testing, but the employer would not allow him to and considered his refusal as a positive test result. Consequently, the employer discharged the claimant on July 8, 2008, for violating the employer's drug and alcohol policy.

After his separation from the employer, the claimant worked for Reiss Excavation, LLC, from August 24, 2008, to November 23, 2008. During this time, the claimant was paid wages totaling \$7,777.93, as reflected on the claimant's W-2 form. The claimant filed a new claim for unemployment insurance benefits with an effective date of December 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct until they have earned at least ten times their weekly benefit amount in subsequent employment. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible person shall be charged against the account of the employers in the base period unless the person has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

As an initial matter, the claimant re-qualified for unemployment insurance benefits after his separation from the employer. The only issue, therefore, is whether the employer's account is subject to charge for its proportional share of benefits paid to the claimant.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant and his witnesses testified credibly about the claimant's medical condition and the effects of the pain medication he received. Under the circumstances, no willful and substantial misconduct has been established. At most, the evidence establishes a good-faith error in judgment by the claimant in declining to take the drug and alcohol test on the evening that he was assaulted. Since work connected misconduct has not been established in this case, the employer's account is subject to charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated February 10, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is subject to charge for benefits paid to the claimant

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs