IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KENNETH C BECKMAN
Claimant

CUSA ES LLC
EXPRESS SHUTTLE
Employer

APPEAL NO. 08A-UI-09584-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 08/17/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kenneth C. Beckman (claimant) appealed a representative's October 13, 2008 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with CUSA ES, L.L.C. / Express Shuttle (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 3, 2008. The claimant participated in the hearing. Gaylord Fridley appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 12, 2003. He worked full time as a driver shuttling railroad employees in the area of the employer's Mason City, Iowa office. His last day of work was August 18, 2008. The employer discharged him on that date. The reason asserted for the discharge was the instruction by one of the employer's two railroad business clients that it no longer wanted the claimant to shuttle its employees. Due to the employer's manner of scheduling or calling its drivers, in order to work a driver would have to be able to drive for either of the railroads served by the employer.

On or about August 18 the claimant had driven some of the railroad's employees. They made a complaint to their supervisor, who passed along the complaint to the railroad's liaison with the employer, who passed along the complaint to the employer's regional manager with a request that the claimant not drive that railroad's employees in the future. As the message was received by the employer's regional manager, the claimant was alleged to have been driving at an excessive rate of speed and weaving in and out of traffic despite the riders' objections, and that as a result the claimant had had to brake suddenly. The claimant acknowledged that on the route, which was on freeway with a 65 mile per hour speed limit, he consistently drove 68 miles

per hour. He denied that he had done any weaving in and out of traffic; rather, he asserted that at 68 miles per hour he was almost exclusively in the right-hand slow lane. He acknowledged that there had been an instance where a truck pulled out in front of him from a side road and he had had to brake suddenly and move into the other lane, but he denied he had done anything in that instance to contribute to the unsafe condition caused by the truck pulling out.

REASONING AND CONCLUSIONS OF LAW:

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. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the railroad business client's request that he be removed from driving its employees due to the allegation that he had been driving in an unsafe manner. The employer relies exclusively on at least fourth-hand accounts from the railroad's employees; however, without that information being provided at least closer to first-hand, the administrative law judge is unable to ascertain whether the employees might have been mistaken, whether they actually observed the entire time, whether they are credible, or whether the persons to whom they made their reports might have misinterpreted or misunderstood aspects of the reports. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant had driven in such an unsafe manner so as to constitute a deliberate violation of the employer's interests. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 13, 2008 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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