

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD D KRAFT
Claimant

APPEAL NO: 09A-UI-14532-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHWAY MOTOR XPRESS INC
Employer

OC: 08/23/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Ronald D. Kraft (claimant) appealed a representative's September 25, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Smithway Motor Xpress, Inc. (employer) would not be charged because the claimant 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 October 26, 2009. The claimant participated in the hearing with his attorney, Kevin A. Fors. Roy Allison, the Fort Dodge shop manager, appeared on the employer's behalf. During the hearing Claimant Exhibits A, B, and C were offered and admitted as evidence. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 16, 2002. The claimant worked full time. Although the claimant may not have considered himself as the Fort Dodge parts manager, his supervisor, Jeff Heun, considered the claimant the parts manager at Fort Dodge in early April 2009. (Claimant Exhibit A.)

Western Express bought out the employer in November 2008. As a result of the two companies merging, the employer had to do inventories from a South Dakota company and a Kansas company. The computer inventories of the two companies were different than the physical inventories the employer completed by actually counting all the pieces in its warehouse. Instead of having the controller or accountant write off the difference between the two inventories to reflect lost parts, the employer randomly chose trucks or units and assigned the missing parts to the truck or unit because the employer believe it looked better to have the parts associated with a unit instead of writing off a missing part. Writing off a missing part could mean an individual could be held responsible for the missing parts. (Claimant Exhibit B.)

After the claimant finished the inventory from the Kansas company, the employer asked him to charge missing items to random units or trucks so the employer did not have to write off any missing parts or explain why or a part was missing. (Claimant Exhibit C.) The claimant did not believe this was ethical and instead asked why an accountant could not write off any missing part. The way the employer asked him to assign units to random trucks or units so a part did not show up as missing created more problems with inventory in the long run. The claimant decided he could not in good conscience falsify an inventory by randomly assigning the missing parts to units that did not use the part, the way the employer wanted it done, the employer discharged him on August 21, 2009.

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 § 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).

The employer discharged the claimant because the claimant declined to falsify an inventory by randomly assigning missing parts to various trucks so the physical and computer inventories reconciled and no one person could be held accountable for missing parts. The employer thought it looked better to randomly assign a missing part to a truck than charge it off as missing or lost. Although this may have been the employer's practice, the claimant chose not to engage in a falsified report. The employer's request to make him do the falsified inventory instead of a true and accurate inventory was not reasonable. Under these circumstances, the claimant did not commit work-connected misconduct.

DECISION:

The representative's September 25, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of August 23, 2009, 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/css