

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CATHERINE F NEWQUIST

Claimant

APPEAL NO. 14A-UI-03443-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEMINI HOLDING COMPANY LLC ET AL

Employer

OC: 03/02/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 20, 2014, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 22, 2013. The claimant participated in the hearing. Shelly Thornhill participated on behalf of the employer with a witness, Brian Hazlett. Exhibits One through Four were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a fuel truck driver from July 2013 to February 24, 2014. She was informed and understood that under the employer's work rules, she was required to report to dispatch as specified and maintain contact with dispatch as required and complete the scheduled deliveries.

On February 4, 2014, the claimant had received an incident report that was labeled as "not a write up" for poor attendance and not completing all of the dispatched orders. She had missed some days of work due to properly reported illness and did not complete some loads due to severe weather.

The claimant completed all six loads she was given by dispatch on February 23, 2014, but for some reason the employer considered her to have failed to complete dispatch.

On the evening of February 24, it was snowing, visibility was poor, the defroster and wipers were not keeping up with the ice accumulation on the windshield, and the roads were not cleared. The claimant completed three of five loads. The nearby refueling terminal was out of diesel and the claimant would have been required to go over 30 miles to get loaded. When she made her last stop to refuel, she noticed other fuel haulers who were shutting down due to hazardous weather and road conditions. The claimant contacted dispatch and informed the dispatcher that she did not feel safe driving. The dispatcher said that was fine and "be safe." As a result, the truck stops in Clive and Newton ran out of fuel.

The employer discharged the claimant on February 25, 2014, for not completing all the deliveries assigned to her, and also based on her past record.

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. Iowa Code § 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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The final incident involved a judgment call by the claimant as to whether it was safe to drive. She notified dispatch before parking the truck after completing three of the five assigned deliveries.

DECISION:

The unemployment insurance decision dated March 20, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs