

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDWIN J ISHAM JR**  
Claimant

**APPEAL NO: 09A-UI-11179-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LYMAN RICHE CORPORATION**  
Employer

**OC: 06/28/09**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Edwin J. Isham, Jr. (claimant) appealed a representative's July 29, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Lyman Riche Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 20, 2009. The claimant participated in the hearing. Kevin Bartels appeared on the employer's behalf and presented testimony from one other witness, Al Quick. 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 April 24, 2007. He worked full time as a mixer truck driver in the employer's Missouri Valley ready-mix plant. His last day of work was June 29, 2009. The employer suspended him that day and discharged him on July 1, 2009. The reason asserted for the discharge was insubordination.

On June 29 the claimant had delivered a load of concrete to a site where the contractor was paving a driveway. The claimant and the contractor exchanged words. The employer asserted that the contractor had ordered the claimant off the job site; the claimant denied that he had been ordered off the job site, but had simply left when he was done pouring the load. As the claimant returned to the plant for another load, the contractor called and spoke to the plant manager, Mr. Quick, complaining that the claimant had been "mouthy." When the claimant arrived back at the plant, Mr. Quick told the claimant that the contractor had complained and that he was going to send another driver with the next load. Mr. Quick attempted to call to another employee to send him with the other load, but due to the noise at the plant was not having success in communicating with the other employee. The claimant then indicated that he would just go ahead and take the load, and proceeded to head to the truck. Mr. Quick tried to

tell the claimant not to do that, but due to the noise the claimant did not hear Mr. Quick. The claimant proceeded to drive away with the load, and Mr. Quick went on to other duties.

When the claimant arrived back at the work site with the load, the contractor became incensed and attacked the claimant with a trowel. When the employer learned what had happened, and since there would not have been a further problem had the claimant not proceeded to return to the job site, the employer discharged the claimant for failing to follow the instruction to allow another driver to take the load back to the job site. There had not been any prior disciplinary issues or problems.

#### **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 his returning to the job site after the employer indicated another driver should take the load. The claimant did not take the other load back to the job site to attempt to be defiant to the employer, but rather had taken Mr. Quick's instruction as being what might have been more desirable, but given the difficulty in getting the other driver, not effective; he proceeded to leave with the load thinking he was acting to assist the employer's business, not harming it. The claimant did not hear a specific instruction not to leave with the truck. Under the circumstances of this case, the claimant's departure with the truck contrary to the employer's preference was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. 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 July 29, 2009 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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