

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L LEDMAN
Claimant

APPEAL NO. 08A-UI-00526-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C H WILSON TRANSPORT INC
Employer

**OC: 02/18/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Michael L. Ledman (claimant) appealed a representative's January 14, 2008 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits, and the account of C. H. Wilson Transport, 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, telephone hearings were held on February 14 and 18, 2008. The claimant participated in the hearings. Ray Rinkol, Attorney at Law, represented the claimant. Daniel Supalla, Attorney at Law, represented the employer. Dennis Rippentrop and Cindy Rippentrop testified on the employer's behalf. During the hearing, Employer Exhibits One, Two and Three and Claimant Exhibits A and B 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 April 28, 2004. The claimant worked as a full-time truck driver. In August the claimant experienced medical issues. After learning about his medical diagnosis, the claimant informed Cindy Rippentrop. (Claimant Exhibit A.) As a result of his medical condition, the employer tried to accommodate the claimant.

In December, the claimant drove loads that were part of the employer's winter fill. The employer knew the claimant wanted to stay in the Lacrosse area. The employer gave him loads from Pine Bend, Minnesota to Lacrosse until December 7. (Employer Exhibit Two.) After the first week of December, the employer did not have any more winter fill loads on this route. The employer then assigned the claimant to take loads to Gladstone. These loads were a 100 miles longer but were completed in four instead of five days.

The claimant informed the dispatcher he would not take the Gladstone loads. After learning the claimant would not take the Gladstone load, Cindy called the claimant. The claimant indicated

he could not do this route and had problems getting his loads safely delivered the week before. Rippentrop reminded the claimant that he needed a doctor's excuse to be off work. Claimant Exhibit A.) The employer also asked the claimant to bring in the truck he drove. The claimant provided the employer with a doctor's excuse that excused the claimant from work December 13 through 17. (Claimant Exhibit A.)

The claimant contacted the dispatcher for work after December 17, but Rippentrop did not receive any messages that the claimant had called for work. The employer called the claimant on December 26. The claimant went to his truck to get some personal property. The employer had moved the truck. The claimant was upset when he called and talked to Dennis Rippentrop the afternoon of December 26. The claimant called Dennis Rippentrop a dickhead and accused the employer of stealing his property. The next day the claimant called to apologize for his conduct the day before. (Claimant Exhibit A.) On December 27, 2007, the employer discharged the claimant for his conduct on December 26. (Employer Exhibit One.)

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. 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).

It is understandable that the claimant was frustrated because his medical condition did not allow him to work as he had in the past. Although the claimant asserted the employer discriminated against him because of his medical diagnosis, the facts do not support this assertion.

December was not a good month for the claimant. The first week of December, the claimant worked but experienced problems making safe deliveries. The second week, the claimant did not feel well and knew he had to see his doctor. Before the employer knew the claimant did not feel well, the employer assigned him a job that required him to drive 100 extra miles. After the claimant indicated he could not work because of his medical condition, the employer asked him to turn in the truck and provide the employer with a doctor's excuse. Since the claimant was off from work for medical reasons, the employer wanted the use the truck he drove when he was unable to work. Although the claimant asserted the employer discharged him the second week of December, the facts do not support this assertion. If the employer had discharged him the second week of December, there was no need for the claimant to call the employer after December 17 about work. Also, if the employer had discharged the claimant the second week of December it is difficult to understand why the claimant became upset when he discovered the employer had moved their truck. As a result of these inconsistencies, the evidence establishes the employer discharged the claimant on December 27.

The employer discharged the claimant because he directed profane and inappropriate comments to Dennis on December 26, 2007. The claimant's conduct on December 26 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee.

DECISION:

The representative's January 14, 2008 decision (reference 03) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 9, 2007, when he reopened his claim. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css