

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA L JAEGER**  
Claimant

**APPEAL NO. 09A-UI-04289-E2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAX MORGAN MOTOR FREIGHT LLC**  
Employer

**OC: 02/15/09  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 5, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 13, 2009. Claimant participated personally and witnesses Robert Johnson and Danny Jones. Employer participated by Clint Feuerbach, General Manager and Chris Bishop, Operations Manager. No exhibits were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired on July 25, 2008 and had the position of safety manager at the time of her discharge on February 16, 2009. The claimant was discharged for disclosure of confidential employer information. The claimant received a warning on February 9, 2009 for disclosure of salary information and was provided a “verbal” warning not to disclose salary or other confidential information. The employer did not call as a witness any individual who received this information. On February 10, 2009 the claimant talked to an employee who had quit that day about items that happened in the office after he quit. He did not testify and there was no specific information about what was said. On February 11 the claimant spoke to Chris Bishop, and told him that Mr. Feuerbach and the owner, Todd Phillips, were at a meeting. Mr. Bishop was considered “2nd in command” and the claimant “3rd in command” for the employer. On February 14, 2009 an owner/operator Jeremy Lurch spoke to Mr. Phillips and stated the claimant had provided him information about other drivers’ routes and rates. Neither Mr. Lurch nor Mr. Phillips testified. The claimant testified under oath she did not disclose confidential information.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such 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. On the other hand 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.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 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).

Findings must be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs. Iowa Code section 17A.14(1). The hearsay evidence is imprecise and conclusory. Because of the nature of the evidence produced at hearing, the employer is unable to show misconduct. The claimant's statement and employer's statement must give detailed facts as to the specific reasons for the claimant's discharge.

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The Iowa Court of Appeals set forth a methodology for making the determination as to whether hearsay rises to the level of substantial evidence. In Schmitz v. Iowa Department of Human Services, 461 N.W. 2d 603, 607-608 (Iowa App. 1990), the Court requires evaluation of the "quality and quantity of the [hearsay] evidence to see whether it rises to the necessary levels of trustworthiness, credibility and accuracy required by a reasonably prudent person in the conduct of their affairs." To perform this evaluation, the Court developed a five-point test, requiring agencies to employ a "common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better evidence; (4) the need for precision; (5) the administrative policy to be fulfilled." Id. at 608

The employer's evidence consisted substantially, although not exclusively of hearsay. It is admissible and the weight it is given is considered with the other evidence in the case. The claimant denied under oath she had disclosed confidential information. The employer did not have Mr. Lurch and Mr. Phillips testify, who could have provided evidence that the claimant disclosed confidential information. None of the employees who were mentioned in the February 9, 2009 warning testified about what information the claimant disclosed. No specific information was provided as to what confidential information the claimant told the former employee. Mr. Bishop did testify the claimant called him and told him that Mr. Phillips and Mr. Feuerbach were having a meeting that may be about him. It does not appear that any specific information was disclosed and Mr. Bishop was next up in the chain of command. The evidence presented by the employer in this case is not convincing. The employer has the burden of proof.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct.

**DECISION:**

The decision of the representative dated March 5, 2009, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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James Elliott  
Administrative Law Judge

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Decision Dated and Mailed

jfe/pjs