

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D LYNCH
Claimant

APPEAL NO. 09A-UI-16113-D

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**Original Claim: 09/20/09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Michael D. Lynch (claimant) appealed a representative's October 15, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Qwest Corporation (employer). After hearing notices were mailed to the parties' last known addresses of record, an in-person hearing was held on December 2, 2009. The claimant participated in the hearing. Steve Zaks, Barnett Associates representative, appeared by telephone on the employer's behalf, and presented testimony from one witness, Pete Leo, who participated in person. During the hearing, Employer's Exhibits One and Two were entered into 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 15, 1989. He worked full-time as a broadband technician. His last day of active work was August 12, 2009. The employer discharged him on October 1, 2009. The stated reason for the discharge was the loss of his driver's license.

The claimant was aware that his job required him to possess a valid driver's license. He had previously had his driver's license suspended for six months in about 2000 but was able to retain his employment because he had found a lower paying job open within the organization into which he had been able to transfer until his license was reinstated, after which he was allowed to transfer back to the broadband technician position.

On or about April 26, the claimant was charged with a second-offense OWI during off-duty hours. The employer knew about the charge. The claimant continued working because he still had his driver's license. On August 13 the claimant learned and informed the employer that he would lose his driver's license for one year as of that date. After the employer learned the

claimant had lost his driver's license, the employer did not allow the claimant to drive any of the employer's equipment.

The claimant was granted two weeks' paid time off, through August 28, 2009, in which to try to find a non-driving position within the company into which he could transfer. While the claimant believed there were some positions within the company into which he could have transferred, he was not considered for those vacancies, and so had not found an internal position by August 28. The claimant was then placed on unpaid leave status for 30 days, ending September 30, to continue the search. The claimant was still not successful in finding a position within the company. The employer discharged the claimant on October 1, 2009, because he no longer possessed the necessary driver's licenses that were required for his job and had not found a non-driving position into which he could transfer.

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); Iowa Code § 96.5-2-a.

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 that 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 that 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 claimant knew and understood his job required him to possess a valid driver's license and a valid commercial driver's license. The Iowa court has ruled that off-duty misconduct may constitute work connected misconduct under the unemployment insurance law if the conduct deliberately violates the employer's work rules. Kleidosty v. Employment Appeal Board, 482 N.W.2d 416, 418 (Iowa 1992). Although the court concluded that violating a work rule was a sufficient condition to prove "work-connected" misconduct, common sense dictates there must be some connection between the off-duty conduct and the employment, even if the employer has a rule prohibiting the conduct. The off-duty conduct would not be "misconduct in connection with the individual's employment," unless the employer establishes some harm or potential harm to its interests from the conduct beyond the fact that a rule was violated. See In re v. Kotrba, 418 N.W.2d 313, 316 (S.D. 1988); Nelson v. Department of Employment Security, 655 P.2d 242 (Wash. 1982).

The evidence supports the conclusion that an off-duty driving offense would have a connection with a job for which driving vehicles and having a valid license were stated job requirements.

There is an obvious harm to the employer when an employee commits an act, even while off duty, that jeopardizes his ability to perform his normal job duties. Although I have not found any reported Iowa cases directly on point regarding the loss of a driver's license, the Iowa court in Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), ruled that a delivery driver who was dismissed because he lost his insurability due to repeated traffic violations was discharged for work-connected misconduct. In a case with facts similar to this case, Markel v. City of Circle Pines, 479 N.W.2d 382 (Minn. 1992), the Minnesota court ruled that where an employee's job requires a valid driver's license, the employee's loss of that license as a result of driving while intoxicated constituted misconduct disqualifying him from the receipt of unemployment compensation benefits. The decision in Markel is persuasive authority. The claimant drove his personal vehicle while intoxicated and put his driver's license, which was a stated job requirement, in jeopardy.

When the claimant engaged in off-duty conduct that jeopardized his driver's licenses, he intentionally and substantially disregarded the standard of behavior the employer had a right to expect from an employee. The employer discharged the claimant for work-connected misconduct when he operated a vehicle while under the influence, which led to the loss of his driver's license. After losing his driver's license, the employer was not required to accommodate the claimant or even grant him a paid or unpaid leave of absence. Under the facts of this case, the employer discharged the claimant for reasons constituting work-connected misconduct. As of August 13, 2009, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 15, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. The claimant is disqualified from receiving unemployment insurance benefits as of August 13, 2009. This disqualification continues until the claimant has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw