

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ROBERT B BROWN  
310 W FIRST ST  
SIOUX CITY IA 51103

SIOUXLAND TAXI & LIMOUSINE SVC INC  
5430 HARBOR DR  
SIOUX CITY IA 51111-1116

Appeal Number: 04A-UI-00945-DWT  
OC 12/21/03 R 01  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Siouxland Taxi & Limousine Service, Inc. (employer) appealed a representative's January 21, 2004 decision (reference 01) that concluded Robert B. Brown (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 18, 2004. The claimant participated in the hearing. Marcia Bedwell, the office manager, and Vincent Farrar, the owner, appeared on the employer's behalf. 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 March 17, 2002. He worked as a full-time cab driver. The claimant worked 8:00 p.m. to 8:00 a.m.

On July 19, 2003, the claimant was involved in an automobile accident in one of the employer's vehicles at the end of his shift. The employer thought the accident occurred because the claimant had fallen asleep and cut in front of another vehicle. The employer did not discharge the claimant for this accident but was worried the claimant would again fall asleep when driving one of the employer's vehicles. The employer's worries were substantiated when dispatchers reported problems with the claimant picking up customers in a timely manner. The employer concluded the claimant sometimes fell asleep after he was dispatched to a residence.

The employer noticed that after the claimant started a recent relationship, his attendance started to become a problem. Even though the employer understood the claimant's immediate supervisor, O'Neill, warned the claimant that his job was in jeopardy prior to December 11, the claimant had no realization his job was in jeopardy. On December 7, the claimant does not dispute that Bedwell talked to him about recent customer and driver complaints. The claimant did not know what specific complaints customers had made about him and denied he had recently cut off another driver. After the July 19 accident, the claimant took extra precautions to drive very carefully.

On December 11, the claimant called O'Neil to let him know he was still ill and unable to work as scheduled at 8:00 p.m. The claimant had been experiencing recent sinus problem and had a bad headache. O'Neil told the claimant that calling in to report he was unable to work was becoming a habit and with the customer complaints, the claimant should give him a good reason to keep him as an employee. The claimant responded by telling O'Neil he had just called in to report he was sick, not to get a lecture on driving. O'Neil decided that based on this type of attitude, the mounting attendance problems and complaints about the claimant's driving, he would ask Farrar to discharge the claimant.

On December 12, Farrar decided to discharge the claimant. Bedwell told the claimant he was discharged because of his attitude and customer and employee complaints about the claimant's erratic driving.

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. 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).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The employer established compelling business reasons for discharging the claimant. The employer, however, relied on hearsay information, complaints and reports from people who did not testify at the hearing. The claimant's testimony was credible and must be given more weight than the employer's hearsay information. Therefore, even though the employer received complaints from customers and had a right to discharge the claimant, the evidence does not establish the nature of the customers' complaints or who made any specific customer complaint. Since a specific customer complaint was not introduced, the claimant had no opportunity to explain the situation. Even though other drivers reported the claimant cut off another driver and went "flying past" a driver, this type of general complaint has several meanings or interpretations. Even though the employer received several complaints the last week of the claimant's employment, there is no evidence when customer complaints of this nature started or if it had been a long-term or short-term problem.

It is obvious the claimant's attendance was a point of contention for the employer, at least at the end of his employment. Even though the claimant did not work as scheduled the last two days, the evidence does not establish the claimant was dishonest about being ill and unable to work. The employer's assertion that because the claimant felt good the morning of December 12, he had not been ill the evening of December 11 amounts to an unsupported conclusion. It was only after the claimant put the employer in a bind when he was ill and unable to work as scheduled on December 10 and 11 that the employer indicated the claimant's job was in jeopardy by asking the claimant to tell the employer one good reason why the employer should keep him as an employee. The claimant's attitude when he called on December 11 may not have been the most appropriate, but it does not rise to the level of work-connected misconduct. For unemployment insurance purposes, the employer did not establish that the claimant committed a current act of work-connected misconduct. As of December 21, 2003, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's January 21, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for compelling business reasons. These reasons do not, however, constitute work-connected misconduct. As of December 21, 2003, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b