

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE G MCLEMORE JR
Claimant

APPEAL NO. 11A-UI-09636-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 01/16/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated July 14, 2011, reference 04, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 23, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike Schaul participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on assignments starting November 8, 2010. His last assignment was working several weeks for Progressive Processor. His last day of work was April 25, 2011.

While working at Progressive, the claimant went through their safety school and had hopes that he would be picked up as a regular employee. He was disappointed when they hired someone from the outside as a full-time employee and told the claimant that he would have to train the worker in his job. He did not think that this was proper for a temporary employee to train and complained to a staffing representative with the employer, Ashley Bofelli. Bofelli agreed and told him to let her know if it happened again. The claimant continued to have problems with supervisors at Progressive asking him to train their employees, which he declined to do. Finally, on April 25, a supervisor with Progressive informed the claimant that it was his last day. The supervisor had also informed the employer that it wanted the claimant removed from the assignment because of his attitude. The claimant ended up leaving work early with notice to a supervisor with Progressive and a phone call to the employer because he was ill.

The employer decided to deactivate the claimant from employment and not contact him about future work because persons at client businesses had said he was difficult to work with.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The employer testified that the claimant was deactivated as an employee because they had received comments from person at client businesses that the claimant was difficult to work with. The separation must be treated as a discharge by the employer.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1). Furthermore, 871 IAC 24.32(8) provides: "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."

No current act of willful and substantial misconduct has been proven in this case. It is quite likely that the attitude complaint about the claimant from the supervisor at Progress was because he declined to train a new employee on this job, which he was told by a representative with the employer he could do.

DECISION:

The unemployment insurance decision dated July 14, 2011, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw