

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY STEINBACH
Claimant

APPEAL NO: 13A-UI-01130-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

DJ'S AUTOBODY INC
Employer

OC: 12/16/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 24, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 26, 2013. The claimant participated in the hearing. Lisa Reinhardt, Controller, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time driver for DJ's Autobody from November 16, 2011 to December 19, 2011. The claimant had two named incidents of not performing to the employer's expectations during the month he was employed there. The first situation occurred when the claimant became lost looking for a rural address, despite having GPS in his truck, and had to call his Supervisor, Josh Wood, for directions, which seemed to annoy Mr. Wood.

The second situations occurred December 14, 2011, when the claimant got his truck stuck, could not communicate with the employer because he could not secure a cell phone signal from the truck's location, and walked back to a truck stop. The claimant was nervous because he was late and forgot the cell phone in the truck. Mr. Wood became concerned about the claimant when he could not reach him and went driving around to look for him. When the claimant and Mr. Wood spoke the morning of December 15, 2011, Mr. Wood sent the claimant home and told him not to return until December 19, 2011. Mr. Wood met with the claimant December 19, 2011, for his 30-day review. Mr. Wood went over his concerns about the claimant's performance and the claimant told him, honestly, he would do his best but could not guarantee anything beyond his present performance although he "aimed to improve." Mr. Wood then told the claimant not to return to work and when he could pick up his final paycheck.

The claimant was on a 90-day probationary period and was still in the training phase. He had some problems with missed deliveries and on occasion had to return to a customer to deliver

parts he failed to deliver on his first pass or go back the following day. The missed deliveries slowed the employer's deliveries to other customers which in turn cost it money. The claimant agreed he needed to improve upon delivery of parts with greater consistency. During the December 19, 2011, meeting, Mr. Wood asked the claimant why he did not ask for directions more frequently and the claimant stated it was because the one time he did he felt Mr. Wood was upset with him, there was tension between the two men following that incident and he was afraid he would be putting his position at risk if he asked again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the employer maintains the claimant voluntarily quit his job, the claimant credibly testified he had no intention

of leaving his position and his employment was in fact terminated. The claimant did not have his 30-day review until December 19, 2011. He had made errors on various deliveries and had been lost on occasion. When he got his truck stuck December 14, 2011, did not have cell phone reception, and, in his hurry to obtain help, forgot his cell phone in the truck, Mr. Wood became concerned about the claimant because he could not reach him and went driving around looking for him. Mr. Wood sent the claimant home when he reported for work December 15, 2011, and told him not to return until December 19, 2011, at which time his 30-day review was conducted. During that conversation Mr. Wood understandably brought up the claimant's shortcomings in his job and the claimant responded, truthfully, that he would do his best but could not guarantee he would improve beyond his present performance. At that point Mr. Wood told the claimant not to bother continuing in his position, when he could pick up his final paycheck and that his employment was terminated. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979). Inasmuch as the claimant did attempt to perform the job to the best of his ability but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are allowed.

DECISION:

The January 24, 2013, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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