

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KURTIS V ZIMMERMAN
Claimant

APPEAL NO: 09A-UI-11352-DW

**ADMINISTRATIVE LAW JUDGE
DECISION**

DREAM TEAM LLC
Employer

OC: 06/28/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Kurtis V. Zimmerman (claimant) appealed a representative's July 31, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Dream Team LLC (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, an in-person hearing was held on August 25, 2009, in Des Moines. The claimant participated in the hearing. William Zimmerman was present as a potential witness. The employer did not appear for the hearing. Based on the evidence, the arguments of the claimant, 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 has worked over three years for the employer. The claimant worked as a full-time floor installer. G.V. supervised the claimant.

The employer gave the claimant a company vehicle to drive. The weekend of June 27-28, the employer asked the claimant to take his company vehicle to a new employee's home because the new employee needed the vehicle to move. The new employee was G.V.'s relative. The claimant drove the vehicle to the new employee's residence and asked G.V. if he was going to return the vehicle to the claimant. The claimant asked because he had a feeling the employer was not going to return the employer's vehicle to the claimant for him to use. After G.V. indicated the claimant would not get the vehicle back to drive, the claimant asked him why. Even though G.V. started to walk away, the claimant kept asking him why he was not going to be able to use the vehicle any longer. Finally, G.V. told the claimant he no longer needed the vehicle because he did not have a job. The claimant's employment ended on June 28, 2009.

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).

The employer discharged the claimant on June 28, 2009. The employer may have had justifiable business reasons for discharging the claimant. The facts do not, however, establish that the claimant committed work-connected misconduct. Therefore, as of June 28, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's July 31, 2009 decision (reference 01) is reversed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of June 28, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css