

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT E DEMPSEY
Claimant

APPEAL NO. 09A-UI-05196-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

XL SPECIALIZED TRAILERS INC
Employer

OC: 03/01/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Scott Dempsey filed a timely appeal from a representative's decision dated March 23, 2009, reference 01, which denied benefits based upon his separation from XL Specialized Trailers, Inc. After due notice, a telephone conference hearing was scheduled for and held on April 29, 2009. Mr. Dempsey participated personally. Participating on behalf of the claimant was his attorney, Mr. Joseph Martin. Appearing as a potential witness was his wife, Shelly Dempsey. The employer, although duly notified, indicated that they would not be participating in the hearing.

ISSUE:

The issue is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds: The claimant was employed by XL Specialized Trailers as a welder from March 30, 2005 until March 2, 2009 when he was discharged from employment. Mr. Dempsey worked on a full-time basis and his immediate supervisor was Brett Regan.

The claimant was discharged from employment when he was unwilling to transfer to a new work location 40 miles distance from his residence. At the time of hire it was not indicated that the claimant would be required to travel or to change job locations. When informed that the company was closing its Oelwein, Iowa facility effective March 6, 2009, the claimant did not agree to transfer to the new work location. After the claimant did not agree to the change in the original agreement of hire, the claimant was given the choice of resigning or being discharged and when Mr. Dempsey indicated that it was not his intention to resign employment, he was discharged by the employer.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons the administrative law judge concludes that the claimant was discharged under non disqualifying conditions. The evidence in the record establishes that Mr. Dempsey was hired to work at the company's Oelwein, Iowa facility and was given no indication at the time of hire that he might be required to transfer to a different job location or to travel in the performance of his duties. When informed that the company was going to close its Oelwein, Iowa facility effective March 6, 2009, the claimant did not agree to transfer as he reasonably considered it to be a change in the original agreement of hire. Based upon the claimant's failure to agree to a violation of the agreement of hire, the claimant was given the choice of quitting or resigning. When the claimant indicated it was not his intention to quit employment, he was discharged.

The evidence in the record establishes no disqualifying conduct on the part of the claimant. Mr. Dempsey was reasonable in declining the offer to transfer to a different job location which was a breach of the original agreement of hire and because the claimant had good cause for not wanting to travel. Due to the distance and personal obligations at home, Mr. Dempsey did not agree. His failure to agree to a change in the original agreement of hire does not constitute misconduct.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged for no disqualifying reasons. Benefits are allowed.

DECISION:

The representative's decision dated March 23, 2009, reference 01, is reversed. The claimant was discharged for no disqualifying reasons. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs