

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD A WHITE
Claimant

APPEAL NO: 12A-UI-12681-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROW TOW / CROW AUTOMOTIVE SVCS
Employer

OC: 09/30/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Crow Tow / Crow Automotive Services, Inc. (employer) appealed a representative's October 19, 2012 decision (reference 01) that concluded Richard A. White (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 18, 2013. The claimant participated in the hearing and was represented by Joshua Gaul, attorney at law. Michael Carroll, attorney at law, appeared on the employer's behalf and presented testimony from three witnesses, Randy Crow, Gail Young, and Adam Malloy. During the hearing, Claimant's Exhibits B, C, D, and E were entered into evidence. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on or about April 1, 2011. He worked full time as a tow driver. His last day of work was October 2, 2012. The employer discharged him on that date. The reason asserted for the discharge was job abandonment by refusing to drive an available truck.

On September 29 the claimant reported for a shift from 3:00 p.m. to 11:00 p.m.; he was then to be the first driver on-call. When he reported for work, the claimant had safety concerns regarding the truck (#30), that the employer had available for him to drive. The claimant had previously reported issues with regard to that truck's fuel gauge, lighting, accelerator, and

engine overheating. The employer told the claimant that he could either drive that truck, or he could go home, but if he did there would be consequences. The claimant determined that since he did not feel safe driving that truck, he had to go home. When he returned on October 2, he was discharged.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the claimant's refusal to drive the assigned truck on September 29. Refusal to perform a task as instructed can be misconduct; however, there must be an evaluation of both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990); *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). Failure to perform a specific task does not constitute misconduct if that failure is in good faith or for good cause. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768 (Iowa App. 1982). Under the circumstances of this case, whether the claimant was fully correct in his beliefs or not, the claimant reasonably believed that driving the truck assigned by the employer would be unsafe; at worst, his refusal to drive the truck was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 19, 2012 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs