

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD E LAHR
Claimant

APPEAL NO: 09A-UI-04491-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 02/08/09
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Express Services, Inc. (employer) appealed a representative's March 11, 2009 decision (reference 03) that concluded Richard E. Lahr (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant's employment separation was for non disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2009. The claimant participated in the hearing. Regan Rausch, an administrative assistant, appeared on the employer's behalf. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing firm. The claimant registered to work for the employer on April 6, 2008. On July 26, 2008, the employer assigned the claimant to a long-term job where he worked as a team lead, and he worked 5:30 a.m. to 2:30 or 3:00 p.m. The claimant was still working at this assignment in early January 2009.

On January 5, 2009, the claimant called the employer and the client to report he was unable to report to work because his furnace went out. The claimant called before 5:00 a.m. and left messages. In his message the claimant indicated he would try to report to work that day. The claimant did not end up going to work because he was busy finding kerosene lamps to keep his water pipes from freezing and he took out his old furnace. The time got away from the claimant and he did not call the client or employer again on January 5.

On January 6, 2009, the claimant again called the client and employer before 5:00 a.m. and left a message that he was still unable to work that morning because his furnace was going to be delivered that day and he would be at work after it was installed. The claimant initially understood the furnace would be installed that morning. Instead, the furnace was not delivered

until 7:00 p.m. The claimant did not call or report to work on January 6 because he waited for his furnace. The employer tried to call the claimant on January 6 to find out for certain if the claimant was going to work sometime during his shift. The claimant did not know the employer called until later that evening.

Even though the claimant did not have any attendance issues before January 5, the client contacted the employer on January 6 and ended the claimant's job assignment. The claimant received the message that he was not to report work on January 7, 2009. The employer did not have another job to assign to the claimant. The employer still considers the claimant an active employee who needs an assignment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. The claimant did not quit his employment. Instead, the client ended the claimant's job assignment after the claimant did not report to work on January 5 or 6, 2009. The employer had no choice but to end the claimant's assignment at the client's request.

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).

Prior to January 5, the claimant's job was not in jeopardy and he did not have any attendance issues. The claimant assumed that as long he contacted the client and employer before his shift on January 5 and 6, the employer and client would understand why he did not report to work either day. The claimant, however, used poor judgment when he did not call and personally talk to the client or the employer on January 6 after he learned his new furnace would not be delivered in the morning. The evidence does not establish that the claimant intentionally disregarded the employer's or client's interest either day. The employer established business reasons for ending the claimant's assignment, but the claimant did not commit work-connected misconduct. Therefore, as of February 8, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's March 11, 2009 decision (reference 03) is affirmed. The employer discharged the claimant from a job assignment for business reasons that do not constitute work-connected misconduct. As of February 8, 2009, the claimant is qualified to receive benefits, provided he meets all 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/pjs