

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN J LEVEKE-MEYERS
Claimant

APPEAL NO. 08A-UI-07618-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES REGIONAL TRANSIT
AUTHORITY/DART**
Employer

**OC: 07/20/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Susan J. Leveke-Meyers filed a timely appeal from an unemployment insurance decision dated August 12, 2008, reference 01, that disqualified her for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on September 12, 2008 with Ms. Leveke-Meyers participating. The employer, Des Moines Regional Transit Authority, did not participate, having previously advised the Agency in writing that it was not contesting unemployment insurance benefits for the claimant. The hearing was concluded on September 19, 2008 by telephone. Exhibit A was admitted into evidence on behalf of the claimant. Danny Townsend testified on her behalf. The administrative law judge takes official notice of Agency fact-finding records.

ISSUE:

Was the claimant discharged for misconduct in connection with her employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Susan J. Leveke-Meyers was employed as a bus driver by Des Moines Regional Transit Authority from March 2, 2001 until she was discharged on April 4, 2008.

The incident leading directly to her discharge occurred on March 26, 2008. On that date Ms. Leveke-Meyers hit a pedestrian in a crosswalk as she was making a turn at the corner of Sixth and Walnut Streets. The pedestrian had the right of way. Ms. Leveke-Meyers has pleaded guilty to failure to yield right of way to a pedestrian. The claimant's view was partially obscured by the fare box in the bus. She was also distracted by a question from another passenger as she turned the corner.

In November 2007 Ms. Leveke-Meyers received a three-year safety excellence award in recognition of her accident-free service for the employer. The award was given despite several prior incidents considered by the company to be preventable. None of the prior incidents had

resulted in personal injury or significant property damage. The only accident after the safety award was the incident on March 26, 2008.

Ms. Leveke-Meyers filed a claim for unemployment insurance benefits during the week of July 20, 2008. A notice of claim was mailed to the employer on July 24, 2008. The employer responded with a letter dated July 28, 2008 which stated:

The Des Moines Area Regional Transit Authority is not contesting unemployment insurance benefits for Ms. Leveke-Meyers.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for disqualifying misconduct. It does not.

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.

Misconduct is most often found in deliberate actions contrary to the employer's interest. However, it may also be found in "carelessness or negligence of such degree of recurrence as to manifest equal culpability."

The claimant readily admitted that the accident leading to her discharge was her fault. The circumstances of the accident as revealed in this record, however, do not show negligence as to

be the equivalent of deliberate actions contrary the employer's interest. The administrative law judge also notes that the record shows that all prior accidents occurred before the claimant received a three-year safety award. Furthermore, the employer indicated at the time that the claim for benefits was filed that it did not wish to contest payment of benefits to the claimant. These factors indicate to the administrative law judge that the employer does not view the claimant's behavior as to be the equivalent of deliberate actions contrary to the employer's interest.

It is not the place of this administrative law judge or of the Agency to second-guess the employer's decision to discharge the claimant. This inquiry is limited to whether under the law unemployment insurance benefits should be allowed or withheld. The law provides that in the case of a discharge the burden of proof lies with the employer. See Iowa Code section 96.6-2. The employer has provided no evidence whatsoever and has indicated that it does not intend to do so. The evidence does not establish disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated August 12, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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