

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY J DUFAUCHARD
Claimant

APPEAL NO. 10A-EUCU-00903-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/01/08
Claimant: Respondent (1)

Section 96.5-2-1 - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 13, 2010 determination (reference 10) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant responded to the hearing notice, but he could not be contacted for the scheduled hearing. Erin Platts, the director of operations, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct or did the claimant voluntarily quit his employment for reasons that disqualify him from receiving benefits?

FINDINGS OF FACT:

The employer is a temporary staffing firm and assigned the claimant to a job on July 7, 2010. The assignment was a long-term job. On July 31, Platts informed the claimant he no longer worked at the assignment. The client asked that the claimant be replaced because of attendance issues. As of July 31, the employer does not know if there was another job to assign to the claimant. When an employee asks about another assignment, Platt records this request. This was not done for the claimant.

When the claimant registered to work for the employer, he signed and received paperwork that informed him he was required to contact the employer within three days of completing an assignment. The information also indicated that if he did not do this, he could be held ineligible to receive unemployment insurance benefits.

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 §§ 96.5-1, 2-a. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job

assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and that the individual may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j.

The employer's reliance on Iowa Code § 96.5-1-j is misplaced. This statute is used when a claimant completes a job assignment, not when he prematurely quits or is dismissed from a job before the assignment has been completed.

The evidence establishes the claimant was dismissed or discharged before the assignment had been completed. For unemployment insurance purposes, the employer discharged him. 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).

When the client asked the employer to end the claimant's assignment, the employer was obligated to do so. Even if the claimant did not work as scheduled, the evidence does not establish that he committed work-connected misconduct. Therefore, as of August 1, 2010, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During this claim year, the employer's account will not be charged.

DECISION:

The representative's September 13, 2010 determination (reference 10) is affirmed. The employer discharged the claimant or ended his assignment early for business reasons, but did not establish that he committed work-connected misconduct. As of August 1, 2010, the claimant is qualified to receive benefits. The employer's account will not be charged during this claim year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw