IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

Appeal Number:	**04A-UI-06116-DWT**
OC 05/09/04	**R 03**
Claimant: Appellant (1)	

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor— Lucas Building, Des Moines, Iowa 50319***.

JUANNA ALVAREZ
C/O CLAUDIA LESLIE
PO BOX 1038
MARION IA 52302

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY
1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

WEST SIDE TRANSPORT INC
4201 – 16TH AVE SW
PO BOX 9129
CEDAR RAPIDS IA 52409-9120

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

CHUCK BLADES
ATTORNEY AT LAW
225 – 2ND ST SW STE 200
CEDAR RAPIDS IA 52401

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Juanna Alvarez (claimant) appealed a representative's May 25, 2004 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of West Side Transportation, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, telephone hearings were held on June 22 and 25, 2004. The claimant participated in the hearing. Carla Ditte, the claimant's witness was present during part of the June 22 hearing. Neither Carla nor Charlie Ditte was available on June 25. Chuck Blades, attorney at law, represented the employer. Dave McIrvin, the chief executive officer, Judy Hannen, and Laura Broulik, the director of claims, appeared on the employer's behalf. During the hearing, Employer's Exhibits One through Six were offered. Employer's Exhibits Two, Three, Four and Five were admitted as 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 21, 2003. The employer hired the claimant to work full time as an over-the-road truck driver. The claimant received a work-related injury and was restricted to light-duty work in early January 2004. While the claimant performed light-duty work, Broulik was her supervisor. The claimant, however, did not formally acknowledge Broulik as her supervisor until May 7 when McIrvin told the claimant she had to follow Broulik's instructions because Broulik was her supervisor.

On April 26, 2004, the employer received information the claimant was released to return to work as a driver and did not have any work restrictions. The claimant, however, did not agree with her doctor's opinion. The claimant did not believe she was capable of performing work as a driver and wanted to return to her home for a second opinion. When the employer did not authorize the claimant time off to go home on May 5, problems developed.

Upon the claimant's repeated requests to put her instructions in writing, Broulik presented the claimant with a typed document on May 6. (Employer Exhibit 5.) The employer gave the claimant the May 6 document May 7. Before the claimant had an opportunity to read the typed document on May 7, she indicated she did not feel well and went to the hospital. Before the claimant left on May 7, McIrvin specifically told the claimant that Broulik was her supervisor and she was required to follow Broulik's instructions.

On Monday, May 10, the claimant reported to work and Broulik asked the claimant to read the typed May 6 document and then sign it to acknowledge that the claimant had read the document. The claimant read the document, but did not agree with everything in the document. She refused to sign the document. After the claimant declined to sign the document, Broulik asked her for the document so she could make a copy of the document and then Broulik would give back the original to the claimant. The claimant refused to give Broulik the typed document. Even though Broulik told her she could be discharged for failing to give Broulik the document, the claimant refused to give Broulik the document. Broulik discharged the claimant on May 10 for insubordination when she repeatedly refused to give Broulik the typed document. After the employer discharged the claimant, the police were called. Only after the police talked to the claimant the claimant finally gave the employer the typed document. The claimant understood the employer could discharge an employee if they refused to follow a supervisor's instructions.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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).

The evidence establishes the claimant did not want to follow Broulik's instructions after the employer received the April 26 doctor's release. The claimant did not believe she was capable of returning to work as a driver and did not want to drive a truck at that time. The employer became less tolerant of the claimant's failure to follow directions and started requiring her to follow certain rules. The claimant became upset and became very uncooperative. The claimant became so uncooperative that on May 7 McIrvin had to tell her Broulik was her supervisor and she had to follow Broulik's instructions.

The claimant did not like Broulik's instructions and refused to even follow the simplest instructions. On May 10, the claimant's refusal to give Broulik the typed May 6 document so Broulik could make a copy of it and then return the original to the claimant amounts to insubordination. The employer made a reasonable request of the claimant and her conduct on May 10 amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons constituting work-connected misconduct.

DECISION:

The representative's May 25, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of May 9, 2004. This disqualification continues until she has been paid ten times her weekly benefit amount for insured work, provided she is otherwise eligible. The employer's account will not be charged.

dlw/kjf