

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY TOMMY

Claimant

APPEAL NO: 12A-UI-14633-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 02/26/12

Claimant: Respondent (1/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 6, 2012 determination (reference 04) that held the claimant qualified to receive benefits and the employer's account subject to charge because he had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Mike Schaul, the owner, 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 based on a November 5 employment separation.

ISSUE:

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

FINDINGS OF FACT:

The employer assigned the claimant to a job on August 20, 2012. The claimant understood that if another employee worked a shift for him, he needed to talk to his supervisor to make sure this was all right.

The claimant worked as scheduled on Friday, November 2. A co-worker asked if he could work the claimant's shift on Saturday, November 3. The claimant did not have problems with this co-worker working his shift. Before the claimant or this co-worker had an opportunity to get authorization for the co-worker to work the claimant's next shift, the supervisor went home. Neither the claimant nor the co-worker received permission for the co-worker to work for the claimant.

The claimant understood the co-worker worked his shift on Saturday. When the claimant went back to work, the client told him that he no longer had a job because he had not reported to work on Saturday as scheduled. This was the first attendance issue the claimant had at this assignment.

The employer learned the client no longer wanted the claimant at that assignment on Monday, November 5. The employer talked to the claimant about another assignment on November 6.

REASONING AND CONCLUSIONS OF LAW:

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

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence establishes the claimant used poor judgment when he did not report to work on Saturday when he had not received permission for a co-worker to work his shift. The client had justifiable business reasons for ending the claimant's assignment when the client had not given authorization for another employee to work for the claimant. Since the claimant did not have any attendance issues before early November, the reason for his employment separation at this assignment does not amount to work-connected misconduct. As of November 11, 2012, the claimant is qualified to receive benefits.

The employer is not a base period employer on the claim year established during the week of February 26, 2012. If the claimant establishes a new benefit year, the employer's account may be subject to charge.

The employer raised an issue of offering the claimant another assignment on November 6. This issue will be remanded to the Clams Section to determine.

DECISION:

The representative's December 6, 2012 determination (reference 04) is affirmed. The employer's client ended the claimant's assignment for business reasons, but the claimant's one attendance issue does not constitute work-connected misconduct, only poor judgment. As of November 11, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer is not a base period employer during the February 26, 2012 claim year. If the claimant establishes a new benefit year and the employer is one of the

base period employers, the employer's account may at that time be subject to charge. An issue of whether the claimant refused the employer's offer of work on or about November 6, 2012, with or without good cause is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css