

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2005. The claimant participated in the hearing with her witness, Beverly Christner. Jim Rotter and Scott Grabe 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 employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 30, 2003. The claimant worked as a part time bus driver. Prior to July 7, 2005, the claimant had never used any of the employer's vehicles for her personal use. The employer's handbook informs employees that using the employer's vehicles for personal use is prohibited.

On July 7, the claimant's vehicle was being repaired and she did not have any transportation. While the claimant was on a bus route, her daughter called the employer because the claimant's husband was experiencing medical problems. When the claimant returned from her route, the department secretary gave the claimant permission to use one of the employer's vehicles to go to her husband at a campground. The claimant used the vehicle and took her husband to the hospital.

The claimant returned the vehicle on Friday morning. The claimant told the secretary that her husband was still in the hospital. Based on the secretary's comments, the claimant understood that if she needed the vehicle again, she could use it but should take the school signs off the vehicle. On Friday morning, the claimant believed her personal vehicle would be repaired and she could use it when she was done at work. The claimant learned later that day, there was a part the mechanic had to order and her vehicle would not be done that day. By the time the claimant received this information, the department secretary had already gone home. Since the secretary had already told the claimant that morning the claimant could again use the employer's vehicle, the claimant told the mechanic she had authorization to take the employer's van on Friday.

The claimant took the van and went back to the campground where she and her family had been living for a month. The claimant's husband passed away on Sunday, July 10. Grabe returned from his vacation and received a call from the sheriff's department because the employer's vehicle had been seen at the campground.

On Monday, July 11, the claimant called and talked to the secretary. The claimant called to report she was unable to work because she needed to make funeral arrangements for her husband. The claimant asked if she could use the employer's vehicle again. The department secretary initially told her this would not be a problem. About 15 minutes later, the secretary called and told the claimant that because the employer had received a complaint, the claimant needed to return the employer's vehicle immediately. The claimant followed this request.

Based on information from the department secretary and the mechanic, the employer discharged the claimant on July 26, 2005, for using the employer's vehicle without

authorization. The employer understood the department secretary gave the claimant permission to use the employer's van only on July 7, 2005.

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. 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).

Based on the employer's conclusions, the employer established business reasons for discharging the claimant. Since the department secretary did not testify at the hearing, the claimant's testimony concerning the conversations between the two of them on July 7, 8 and 11 must be given more weight than the employer's reliance on the secretary's written report. The evidence establishes the secretary indicated on Friday, July 8, the claimant could again use the employer's vehicle as long as she took off the school signs. Initially, the secretary again gave the claimant permission to use the vehicle on Monday, July 11. After the secretary learned of a complaint, she then informed the claimant she could not use the employer's vehicle for personal use that day and needed to return the vehicle immediately.

The claimant had the secretary's permission to use the employer's van July 7 through 11. If the secretary did not have the authority to give the claimant permission to use the employer's vehicle, the claimant did not know this since Grabe was out of town. Under the facts of this case, the claimant did not commit work-connected misconduct. As of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's August 16, 2005 (reference 01) is affirmed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of July 24, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/pjs