

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD E GOODWIN
Claimant

APPEAL NO. 10A-UI-16661-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPEE-DEE DELIVERY SERVICE INC
Employer

OC: 10/31/10
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 1, 2010 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on February 15, 2011 and concluded on May 10, 2011. Claimant participated and was represented by Victoria Siegel, Attorney at Law. Employer participated through State Operations Manager Ronald Watson and Regional Manager Landon Moss and was represented by Bridget Penick, Attorney at Law. Employer's Exhibits 1 through 10 were admitted to the record. Claimant's Exhibit A was admitted to the record. Also participating on May 10, 2011 were subpoenaed witnesses Former Branch Manager Quenton Willis and Route Driver John Muchow. John Scully did not make himself available. Employer called additional witnesses Route Driver Marvin Burleson, Overnight Driver Rex Glattfelder, Package Handler Jacob Brown, Former Route Driver and Current Branch Manager Vince Brown, Iowa and Nebraska Regional Manager Bill Warman, and Executive Assistant Jamie Krantz.

ISSUE:

The issue is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as Ottumwa branch manager and was separated from employment on November 5, 2010. Warman visited the Ottumwa branch during the week of October 25, 2010 after employees complained about the time claimant was absent from work. He investigated and found that claimant's spouse, Tracy Goodwin, had been paid for hours she did not work and claimant signed her out on timekeeping/payroll records for the hours she was not there. Employer found during its investigation comparing employee identification cards and time clock records on November 5 that claimant authorized wage payment to his wife Tracy Goodwin for hours she was not at work. On October 27 when Krantz spoke to claimant about the issue, he told her that Tracy worked from 1:00 a.m. to 9:30 a.m. every day without offering exceptions. Jacob Brown worked overnights from 3:30 a.m. to 7:30 a.m. unloading and sorting freight. He worked with Tracy Goodwin, claimant's spouse, who worked full time from 1:00 a.m. to 9:30 a.m. She had a half hour lunch break but he did not. Several times she left at 6:30 a.m. to take her children to school or go to lunch over the

three weeks they worked together. More often than not she had not returned by the time he left at 7:30 a.m. He first complained to Vince Brown about Tracy Goodwin's breaks on October 25, 2010 and the issue was reported to the payroll department on October 27 after Glattfelder also complained to him. He also told Moss, claimant's supervisor, that on October 25 and 27, 2011, Tracy Goodwin was not at work. Tracy reported problems with her timecard badges to Krantz over many months and swore her timecard punches were not working even though the punch in times worked but the claimed faulty punches were at breaks and clock out time. Muchow had trouble with his timecard on occasion when he first began the employment. He worked Christmas Eve 2010 when Brown let him leave early that day at 2:30 p.m. and told him to give him his badge and he would clock him out at 3:30 p.m.

Claimant also had regularly been giving part of his route to another driver in order to leave the shop mid-afternoons and had hourly employee Ben close the shop for him, which cost the employer more money in hourly wages and overtime. He was frequently not present to close the shop and did not ask permission from Moss or give notice he would be gone other than on Mondays because his mother was being treated for cancer. (Employer's Exhibit 3) When Brown was trained as branch manager, he was told the lead driver may close for the manager one day per week without getting approval from regional manager Moss. Willis recalled that "everyone in the shop and the secretaries in the Des Moines office" knew claimant's mother had been ill and others would be closing the shop, but he did not indicate the claimant's supervisor or regional manager were aware of this practice. Burleson often closed the shop, which is not typical for the lead driver because it is usually the shop manager's job duty. Sometimes he closed the shop when no one else was there to close if Goodwin did not tell him he would not be there to do so. Weekly reports are completed indicating who closed the shop. (Employer's Exhibit 4)

On November 3 claimant reported zero packages left in the building from that morning but Watson was there later the same day and found over 200 envelopes left. (Employer's Exhibit 1) Claimant told the employees to leave the Gaylords (mail pallets) for the night crew so they would have more work to do. They are to be handled without delay as they arrive. While manager, Willis had issues with Vince Brown and noted that packages are left in the shop at the close of business on a regular basis even when attempts were made to get them out every day, he did not describe the scope as being 200 packages on one shift.

Claimant had been given no prior warnings about the issues. Warman suspended him on November 4, 2010. The employer's policy calls for progressive discipline of coaching, verbal reminder or reprimand, written reprimand or reminder, suspension without pay, and termination depending on the severity of the offense.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

While claimant argued that the missed timecard reports have different signatures on Employer's Exhibit 5 and Claimant's Exhibit A, when compared to Employer's Exhibit 9 that has printed and cursive versions of claimant's name in his writing, reasonably show all are comparable. Even discounting the Browns' testimony as having a basis in self-interest or bias, Burleson is credible that he often closed the shop when claimant did not tell him he would not be there to do so. Although Brown allowed employees to leave early on Christmas Eve, it is an isolated incident for all employees and not a pattern of behavior as engaged in by the claimant solely for his spouse. Moss' testimony is not consistent with the written statement in the proposed exhibits with respect to discussing the absences from work at closing from October 27 through 29, 2010. However, the record is clear that claimant falsified or helped falsify Tracy Goodwin's time records and the November 3, 2010 daily report about the number of packages left in the building at the close of business. Even without prior warning, the deliberate falsification of time records and productivity report is misconduct. Benefits are denied.

DECISION:

The December 1, 2010 (reference 03) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css