

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY A DOMINE
Claimant

APPEAL NO. 08A-UI-10507-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN STAR TRANSFER INC
Employer

**OC: 10/05/08 R: 02
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 27, 2008, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on November 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Dan Ferguson participated in the hearing on behalf of the employer with a witness, Diana Rios.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a route driver from December 27, 2004, to October 5, 2008. Her responsibilities were to transport mail from the Cedar Rapids to outlying post offices. The claimant was informed and understood that under the employer's work rules, she was required to make sure that all the mail on her truck was delivered to the post offices on her route. Her supervisor was Dan Ferguson.

The claimant was discharged on October 5, 2008, after Ferguson claimed that she had failed to deliver all the mail on her truck on October 3 and 5, 2008. Ferguson did not confront the claimant about either incident and when she was discharged, he told her it was because she was full of controversy and turmoil. The claimant did not deliberately leave any mail on her truck on October 3 or 5.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code section 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the

contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 substantial and 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. No willful and substantial misconduct has been proven in this case. Ferguson's credibility is undercut by the fact that he never said a word to the claimant either time about leaving mail on the truck. He admitted it was his word against the claimant's. Since the employer has the burden to prove misconduct by a preponderance of the evidence, the employer has not met its burden.

DECISION:

The unemployment insurance decision dated October 27, 2008, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs