

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E FLOY
Claimant

APPEAL NO. 08A-UI-04746-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PETE KLEIN TRUCKING INC
Employer

OC: 04/06/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 8, 2008, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 24, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Pete Klein participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from September 2005 to April 4, 2008. His route involved picking up a load at Sparboe Foods in Vincent, Iowa, and delivering to Sunny Fresh Foods in Mason City, Iowa. The owner of the employer, Pete Klein, was his supervisor.

On March 13, 2008, the claimant's tanker was not loaded when he arrived. He asked the employee in charge of loading the truck why it was not loaded. When the person did not answer, the claimant told him "you do your job and I'll do mine." The employee got upset and called the plant manager at Sparboe Foods. When the plant manager approached the claimant, he angrily shoved the claimant against the wall. The claimant told the plant manager that he did not need that kind of abuse and was leaving.

The claimant left and went into town and had a cup of coffee to cool off. He called the plant manager and indicated that he was returning for the load. The plant manager said fine. The claimant waited until the tanker was loaded and delivered the load.

Someone with Sparboe Foods contacted Klein a couple weeks later and informed Klein that Sparboe Foods no longer wanted the claimant to haul products for it because of his conflicts with employees.

On April 5, 2008, Klein telephoned the claimant and told him that Sparboe Foods did not want him out there anymore. Klein told him that he had loads out of Rembrandt, Iowa. The claimant responded that he did not know where Rembrandt was. Klein then said, "Where's my truck?" The claimant replied that it was sitting at his house. Klein instructed the claimant to bring the truck to a specified truck stop. Based on Klein's inquiry about the truck and request that he return the truck, the claimant reasonably believed that Klein was discharging him. Based on his attorney's advice, the claimant did not drive the truck to the truck stop due to liability concerns. On April 15, 2008, the employer retrieved the truck from the claimant's property. There was no discussion between the parties about the claimant continuing to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The preponderance of the evidence establishes that the employer discharged the claimant after the claimant stated that he did not know where Rembrandt was. The statement did not constitute a voluntary quitting of the employment. When Klein immediately asked for his truck, the claimant reasonably believed that he had been discharged. There was no further discussion about continuing employment. The separation must be treated as a discharge for unemployment insurance purposes.

The next 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. The only first-hand knowledge about what transpired at Sparboe Foods comes from the claimant's testimony. Based on this testimony, the claimant did nothing improper while hauling for Sparboe Foods. Likewise, the claimant's response that he did not know where Rembrandt was cannot be considered willful and substantial misconduct.

DECISION:

The unemployment insurance decision dated May 8, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs