IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

HERB P BRAMMER
Claimant

PRIORITY COURIER INC
Employer

APPEAL NO: 10A-UI-09578-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/06/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Herb P. Brammer (claimant) appealed a representative's July 1, 2010 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Priority Courier, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2010. The claimant participated in the hearing. Fred Anderson appeared on the employer's behalf and presented testimony from one other witness, Lexie Salbo. 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:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on April 10, 2007. He worked full time as a warehouse dock worker and driver out of the employer's Carter Lake, Iowa distribution facility. His last day of work was August 10, 2009. On August 11 he started a week of vacation from which he was scheduled to return on August 17.

On August 12 the claimant was involved in a serious automobile collision, incurring significant injuries which alone would have prevented him from returning to work on August 17. Even after his doctor would have permitted him to return to work in some capacity in about March 2010, he was subject to light-duty restrictions until he was given a full release on or about June 3, 2010. The claimant had understood he was on a leave of absence from the employer. When the claimant advised the employer of his accident and his inability to return to work for at least a considerable period of time after August 17, 2009, due to the employer's business needs the employer replaced the claimant on August 20, 2009.

As a result of the August 12 collision the claimant was charged with operating a motor vehicle while intoxicated (OWI). He license was suspended for 120 days, but his license had been reinstated by the end of March 2010. The claimant had a prior speeding ticket received in 2008.

The claimant had not previously been advised that his insurability was in jeopardy. At some point after August 12, the employer's insurance carrier determined it could no longer provide coverage for the claimant. The claimant's driving responsibilities were about 50 percent of his job duties. Therefore, the employer determined at least by sometime in January 2010 that the claimant's employment was terminated. However, no official notification of this was sent to the claimant, nor was it made clear to him verbally that he had been discharged until about May or June 2010, when the claimant was making contact with the employer, seeking to make arrangements to return to work in anticipation of his approaching full medical release.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his loss of insurability. Where an employee's driving restrictions were incurred due to off-duty conduct but the employee had reason to know that his driving record was putting his job in jeopardy, the loss of ability to drive or to be insured to drive can be found to be intentional and work-connected, and therefore disqualifying misconduct. Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). Misconduct connotes volition. Huntoon, supra. Where an employee's driving record results in loss of his employment, the discharge is not for disqualifying misconduct unless there is a showing that the individual both knew that his job was in jeopardy and that he subsequently and intentionally committed traffic violations. Fairfield Toyota, Inc. v. Bruegge, 449 N.W.2d 395 (Iowa App. 1989). In this case, there was no prior notice to the claimant that his insurability was at risk or that incurring an off-duty OWI could result in the loss of insurability and therefore his job; there is no evidence the claimant intentionally acted in such a way as to jeopardize his job. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based

upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 1, 2010 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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