

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS LICUP
Claimant

APPEAL NO. 09A-UI-17902-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIORITY COURIER INC
Employer

**Original Claim: 11-01-09
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 23, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 8, 2010. The claimant participated in the hearing with Attorney Rod Kleitsch. Jim Deweerdt, Terminal Manager, and Fred Anderson, Regional Manager, participated in the hearing on behalf of the employer. Claimant's Exhibits A, B, and C were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time driver for Priority Courier from July 28, 2008 to October 27, 2009. The claimant believed his scheduled start time was 6:00 a.m., but the employer's records show that he was hired to begin work at 5:00 a.m. and after working for the employer for approximately one month the claimant started coming in at 5:00 a.m. "to get more hours" and was paid for that time the remainder of the time he was employed with Priority Courier. The employer previously used the honor system to keep track of employees' time worked and employees turned in handwritten time sheets. The claimant never indicated on his handwritten time sheet that he was late for work. The employer then installed an automated time clock and the claimant was tardy nine out of 15 days. On September 28, 2009, he arrived at 5:44 a.m.; on September 30, 2009, he arrived at 5:44 a.m.; on October 2, 2009, he arrived at 5:33 a.m.; on October 9, 2009, he arrived at 5:20 a.m.; on October 12, 2009, he arrived at 6:00 a.m.; on October 15, 2009, he arrived at 5:43 a.m.; on October 19, 2009, he arrived at 5:27 a.m.; on October 20, 2009, he arrived at 5:49 a.m.; and on October 25, 2009, he arrived at 5:25 a.m. The claimant was also considered a no-call, no-show August 4, 2009, because he did not call before the start of his shift as required by the employer's policy. On October 23, 2009, Shift Supervisor Dennis Giesler and another associate observed the claimant drive by their location with his son in his van in violation of the employer's policy prohibiting unauthorized passengers in his company vehicle. The claimant received permission to pick his son up from

school in his work van on two previous occasions but did not seek permission October 23, 2009. Because of the potential liability issues, and after considering the claimant's history of tardiness, the employer terminated his employment October 27, 2009.

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 section 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.

The claimant was tardy on nine occasions between September 28, 2009 and October 25, 2009. While the claimant testified his scheduled start time was 6:00 a.m. the employer testified he was hired to start work at 5:00 a.m. and by going in at 5:00 a.m. for approximately the last 14 months of his employment, he effectively changed his start time to 5:00 a.m. and acquiesced to a 5:00 a.m. start time even if he were hired to work at 6:00 a.m. The employer relied on the claimant being there at 5:00 a.m. and had no reason to believe the claimant thought he was to start work at 6:00 a.m. Additionally, it would not have paid the claimant for going in early. The last incident involved the claimant picking his son up from school in his company vehicle without permission to do so, which was a violation of the employer's policy. Although the claimant asked for and was granted permission to pick up his son on two prior occasions, he failed to get permission October 23, 2009, and the employer would have faced liability if there was an accident. Under these circumstances, the administrative law judge concludes the claimant's

conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 23, 2009, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw