

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY W DITTRICK
Claimant

APPEAL NO. 11A-UI-16122-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 11/06/11
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Express Services, Inc. filed a timely appeal from a representative's decision dated December 7, 2011, reference 03, which held the claimant eligible to receive unemployment insurance benefits. After due notice was issued, a telephone hearing was held on January 23, 2012. The claimant participated. The employer participated by Ms. Kaley Eppnin, branch manager.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Gary Dittrick was employed by Express Services, Inc. from October 4, 2010, until October 29, 2010, when he was removed from his assignment by request of the client. Mr. Dittrick worked as an assembly lead at the XL Specialty Trailer Company and was paid by the hour.

XL Specialty Trailer Company requested that Mr. Dittrick be removed from the assignment because Mr. Dittrick did not have the computer skills necessary and was not able to learn those skills quickly enough to suit the client employer. Mr. Dittrick performed his duties to the best of his abilities and notified Express Services, Inc. at the completion of his work assignment. The claimant, at that time, was seeking new employment; however, no additional assignments were available to him through Express Services, Inc.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

In this matter, the evidence establishes the claimant was separated from his assignment through Express Services, Inc. at the request of the client employer because the claimant was unable to reach the client employer's expectations with respect to computer skills. Mr. Dittrick informed both Express Services and the client at the time of hire of his limited computer skills. The claimant attempted to the best of his ability to improve his skills but was unable to reach the level of competence required by the client employer and therefore was separated under non-disqualifying conditions. The claimant contacted Express Services immediately upon being separated from the temporary employment assignment, looking for new work, but no work was available to him. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 7, 2011, reference 03, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw