

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARWYN M TRUDEAU
Claimant

APPEAL NO: 14A-UI-06704-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEROY FISCHER TRUCKING LLC
Employer

OC: 06/08/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Leroy Fischer Trucking, L.L.C. (employer) appealed a representative's June 24, 2014 decision (reference 01) that concluded Darwyn M. Trudeau (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 22, 2014. The claimant participated in the hearing. Leroy Fischer appeared on the employer's behalf. 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on or about July 22, 2013. As of about March 2014 he worked full time as a full-time driver. His last day of work was May 19, 2014. The employer discharged him on May 29, 2014. The reason asserted for the discharge was that the claimant had refused a load.

The employer had not had work for the claimant from May 20 through May 29, in part because the claimant's normal truck was having work done on it. On the morning of May 29 the claimant had checked in with the employer to see if there was any work for him that day; the employer said there was not. As a result, the claimant went to assist an acquaintance in doing work removing brush and trees all day from that person's property.

At about 5:30 p.m. that evening the employer called the claimant and said that he had set up a load for the claimant that needed to be delivered to Des Moines by 7:00 a.m. on May 30. The

claimant protested that he was tired after working on the other project all day, and suggested that the load could be pushed back so that he could pick up the load early on the morning of May 30. The employer insisted, and finally the claimant agreed to pick up the trailer at about 9:00 p.m. The claimant went to the yard to pick up the trailer at about 9:00 p.m., but after searching the yard for an hour was unable to find it. By this time he was even more exhausted after his day of physical work. He called the employer at about 10:00 p.m. and said that he was too tired, that he could not take the trailer that night. The employer then told the claimant that if he did not take the load at that time, he was fired.

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. Rule 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. Rule 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 declining the load on the night of May 29. Refusal to perform a specific task as directed can constitute misconduct, but this must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985). Failure to perform a specific task does not constitute misconduct if that failure is in good faith or for good cause. *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768 (Iowa App. 1982). Under the circumstances of this case, the claimant's declining the load on May 29 was for good cause and was not misconduct. 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 June 24, 2014 decision (reference 01) is affirmed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css