IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

WAYNE E SAGER
Claimant

SIERRA MOUNTAIN EXPRESS INC-ADP
Employer

APPEAL NO. 12A-UI-13607-NT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/14/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Employer filed a timely appeal from a representative's decision dated November 9, 2012, reference 02, which held claimant eligible to receive unemployment insurance benefits. After due notice was provided, a telephone hearing was held on December 13, 2012. The claimant participated. The employer participated by Ms. Kelli Arp, Human Resource Manager. Employer's Exhibits A and B were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Wayne Sager was employed by Sierra Mountain Express Inc. from November 23, 2009 until October 17, 2012 when he was discharged from employment. Mr. Sager was employed as an over-the-road tractor trailer driver transporting new vehicles via automobile transport truck to locations in the mid-west from a railroad unloading facility located in Council Bluffs, Iowa. Mr. Sager was paid a percentage of the revenue garnered from each run. His immediate supervisor was the dispatcher/terminal manager.

Mr. Sager was discharged from his employment on October 17, 2012 without being given a reason from the terminal manager. The terminal manager only cited the fact that Mr. Sager was an "at-will" employee.

Prior to his discharge Mr. Sager had received two warnings from the company. On January 24, 2012 the claimant had been warned because he unloaded two vehicles in the wrong town in the state of Kansas. The claimant was warned to begin running days and not overnights. On August 8, 2012 the claimant received a second warning from a different terminal manager. At that time the claimant was warned about damages attributed to wrong drop, beginning to work on time, focusing on his own job and not the job of others, and was warned that staying out overnight was a job requirement when needed. The claimant was further warned to maintain

daily communication with the manager and to be in full compliance with employer expectations. The claimant was informed that he was being placed on a 30-day probation and that his manager would meet with him for a review of his probationary period at the conclusion of the 30 days.

Prior to being discharged the terminal manager did not again meet with Mr. Sager or indicate any dissatisfaction with the manner in which Mr. Sager was performing his duties. Because the claimant felt that he was in compliance with the company expectations he was surprised at being discharged on October 17, 2012. Although the claimant inquired the employer gave no specific reason for his discharge at that time.

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. Conduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v.

Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based upon such past acts. The termination of employment must be based upon a current act. See 871 IAC 24.32(8).

Allegations of misconduct without additional evidence shall not be sufficient to result in a disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence may expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

In this matter the evidence in the record establishes that Mr. Sager had received two previous written warnings from Sierra Mountain Express Inc. The final warning (see Exhibit A) lists a number of areas that the company expected Mr. Sager to comply with. The warning informed the claimant that failure to meet the employer's expectations would result in his termination when also, however, promised that the terminal manager would meet with the claimant at the conclusion of the 30 days to review his work. The evidence in the record establishes that the terminal manager did not again meet with Mr. Sager or indicate any areas of dissatisfaction or unsatisfactory performance prior to the claimant's unexpected discharge from employment on October 17, 2012. Although requested to do so at that time, the terminal manager made no statement as to why the company was discharging Mr. Sager at that time.

The question before the administrative law judge in this case is not whether the employer has a right to discharge an employee as a "at-will" employer but whether the discharge is disqualifying under the provision of the Employment Security Law. While the decision to terminate Mr. Sager may have been a good decision from the terminal manager's viewpoint the evidence in the record does not establish any disqualifying misconduct on the part of the claimant since his previous warning. As the evidence in the record does not establish a current act of misconduct, claimant's discharge from employment took place under nondisqualifying conditions and benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated November 9, 2012, reference 02, is affirmed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

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