

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 06A-UI-04605-SWT
OC: 04/02/06 R: 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge
Section 96.5-1-a - Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 17, 2006, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 15, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Marv Stoltz participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant had two periods of employment as a truck driver for the employer. The first was from August to November 2005, which ended when the claimant accepted a job hauling grain for Mellinger Livestock Trucking. The second was from February 23, 2006, to March 28, 2006.

The claimant was discharged on March 28, 2006, for driving more hours than allowed by United States Department of Transportation on March 23 and because of a motorist complaint on March 22, 2006, that the claimant had cut him off.

On March 22, 2006, the claimant did not see the motorist and did not deliberately cut the motorist off. On March 23, 2006, the claimant continued driving even after he was out of driving time because he understood from the dispatcher that the employer wanted to complete a delivery to a customer. He had been on a break from driving when he got a message from the dispatcher indicating that he needed to deliver the load right way.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 2, 2006. His base-period on the claimant was from January 1 to December 31, 2005.

REASONING AND CONCLUSIONS OF LAW:

There were two periods of employment and each one needs to be addressed separately under the unemployment insurance law. The first period of employment is actually the period of employment that determines whether the employer's account is chargeable since it was his base-period employment.

The first issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer in November 2005.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on this separation from employment. Pursuant to the statute, the employer's account will not be charged for any benefits paid to the claimant.

The second issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. The claimant used poor judgment in driving after he was out of driving time, but he believed his dispatcher wanted the load delivered right away and knew he was out of driving time. If the wages paid to the claimant from February 23, 2006, to March 28, 2006, appear in the base

period in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated April 17, 2006, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not chargeable for any benefits paid to the claimant because the claimant left his base period employment with the employer to accept other employment.

saw/pjs