

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRI C TRAN
Claimant

APPEAL NO. 06A-UI-09956-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WARREN DISTRIBUTION COMPANY
Employer

**OC: 09/17/06 R: 12
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Tri C. Tran (claimant) appealed a representative's October 12, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Warren Distribution Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant participated in the hearing. Jenny Anderson, a human resource generalist, 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. 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:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 8, 2003. The claimant worked as a full-time employee. The employer's attendance policy informs employees if they have two consecutive days that they do not call or report to work, the employer considers the employee to have voluntarily quit employment. The employer also may discharge employees if they are excessively absent from work, which means the employee has accumulated ten attendance points in a year. Prior to September 11, the claimant's job was not in jeopardy and he did not have an attendance problem.

On September 11, 2006, on the claimant's way to work, his car broke down on the Interstate. When the claimant was able to get to a gas station, he called the employer and told a male employee to let Steve Boswell, the claimant's supervisor, know that the claimant had car problems and would not be at work. The claimant's shift started at 2:30 p.m. Boswell did not

receive the message that the claimant had called. When the claimant did not report to work on September 11, Boswell called the claimant's emergency phone in an attempt to contact the claimant. Boswell was unable to contact the claimant.

The claimant's vehicle was in the shop being repaired on September 12. The claimant did not call the employer to let the employer know he was unable to work as scheduled on September 12. The mechanic did not finish repairing the claimant's vehicle until late September 13. The claimant tried to call the employer between 4:00 p.m. and 5:00 p.m. to report he was again unable to work as scheduled. No one answered the claimant's phone call. The claimant did not attempt to contact the employer again on September 13. The claimant does not have a phone and was again using a phone at a gas station or convenience store.

The claimant reported to work as scheduled on September 14, 2006. The employer then informed the claimant he no longer worked for the employer. The employer considered the claimant to have voluntarily quit when he did not call or report to work on September 11 and 12. The employer no longer considered the claimant an employee as of September 13, 2006.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The facts do not establish that the claimant intended to voluntarily quit his employment. Although the claimant was not at work for three days, he reported to work as scheduled on September 14, 2006, and talked to an employee on September 11. For unemployment insurance purposes, the employer initiated the September 13 employment separation.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established compelling business reasons for discharging the claimant. The facts, however, do not establish that the claimant intentionally or substantially disregarded the employer's interests. On September 11, the claimant had no idea he would experience car problems on the way to work. Even though the claimant did not personally talk to his supervisor, he contacted the employer on September 11. On September 12, the claimant's vehicle was at a repair shop. The claimant should have contacted the employer on September 12, but did not. On September 13, the claimant should have contacted the employer

prior to his shift, but again did not. As soon as the claimant's car was repaired, he went to work on September 14. The claimant's failure to call the employer in a timely manner on September 12 and 13 does not rise to the level of work-connected misconduct when the claimant did not have an attendance issue prior to September 11. Therefore, as of September 17, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's October 12, 2006 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of September 17, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/cs