

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE J LAHR
Claimant

APPEAL NO. 09A-UI-02990-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 09/14/08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated February 16, 2009, reference 01, which held the claimant eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 14, 2009. The claimant participated personally. The employer participated by Mr. Matt Timmerman.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant was employed by Express Services assigned to work at Eagle Window and Door Company from November 15, 2008 until December 18, 2008 when he was told that there was no work available that day due to snow conditions. Subsequently, Mr. Lahr became ill. Although the claimant reported his impending absence, he was separated from employment because he could not report for scheduled work due to illness.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that the claimant was discharged for intentional misconduct in connection with his work. It does not.

The evidence establishes that the claimant was separated when he was unable to report for scheduled work due to illness. The claimant notified the employer of impending absences and was discharged when he could not report to work because he was ill.

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.

For the reasons stated herein the administrative law judge finds the claimant was not discharged for intentional misconduct but was discharged because of absence due to illness that was properly reported. Unemployment insurance benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 16, 2009, reference 01, is affirmed. The claimant was dismissed under nondisqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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