

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRIS A HALL
Claimant

APPEAL NO: 14R-UI-13071-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS HOLDINGS LLC
Employer

OC: 11/03/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 15, 2014 (reference 01) determination that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated at the January 15, 2014 hearing. Lance Blomberg, the general manager, and Tim Salerno, the operations manager, appeared on the employers' behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 3, 2013. The employer hired him to work as a full-time route sales representative on May 13, 2014.

On August 20 the employer experienced a power outage and had to delay deliveries scheduled that day. The power outage also prevented the employer from timely completing payroll so payroll checks that were directly deposited in banks were not this week. Employees could pick up payroll checks at the office on Friday, August 22.

After the power outage occurred, Blomberg sent the claimant a text message: "Due to the power outage I'll help you on 8-20 and 8-21. I'll help you get caught up." The claimant understood Blomberg would help him on August 20 and 21 to complete his route. On August 20 the claimant knew Blomberg took some of his deliveries.

On August 21 the claimant expected Blomberg to meet him at work and help him finish his deliveries. While the claimant was talking to Blomberg on the phone, the claimant became upset when Blomberg told him that he had not told him he would help him that day and had other things to do. The claimant was so upset with Blomberg that he hung on him. Blomberg tried to call him back but the claimant would not pick up his phone. While the claimant was angry and upset with Blomberg, he made a comment about Blomberg being a habitual liar to Salerno, Blomberg's brother-in-law. Salerno reported this comment to Blomberg.

Later on August 21 Blomberg talked to the claimant about his derogatory comment. Blomberg told the claimant his comment was unacceptable. Blomberg then told the claimant that he could either sign a written warning for making the August 21 comment or he could resign. The claimant did not sign the written warning or resign.

When Blomberg did not receive any message from the claimant that he was unable to work, he assumed the claimant did not report to work in retaliation. Later that morning, the claimant called to find out why his check had not been deposited into his bank account. When the claimant came in to pick up his check on August 22, Blomberg told him he was done because they did not agree on certain things and it was best if they went their separate ways. The employer decided to end the claimant's employment when he did not report to work because the claimant's recent conduct amounted to insubordination.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's conduct and comment on August 21 amounts to insubordination. The claimant was upset when he hung up on Blomberg, his supervisor. He was also upset when he indicated Blomberg was a habitual liar. Since the employer asked the claimant to sign a written warning for the way he talked about and treated Blomberg on August 21 and then did not report to work the next day, the claimant's assertion that he was ill and unable to work is questionable. This is especially true since the claimant went to the office to pick up his check on August 22. Even if the claimant had reported to work on August 22, his conduct and August 21 comments amount to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for reasons amounting to work-connected misconduct. As of August 24, 2014 the claimant is not qualified to receive benefits.

DECISION:

The representative's September 15, 2014 (reference 01) determination is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of August 24, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

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