

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

DEBORAH A BUCK  
HC82 BOX 530  
ATOKA OK 74525

SMITHWAY MOTOR XPRESS INC  
PO BOX 404  
FORT DODGE IA 50501

Appeal Number: 05A-UI-08217-DWT  
OC: 07/03/05 R: 12  
Claimant: Appellant (2)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a – Suspension/Layoff

STATEMENT OF THE CASE:

Deborah A. Buck (claimant) appealed a representative's August 2, 2005 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Smithway Motors Xpress, Inc. (employer) would not be charged because the claimant quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 25, 2005. The claimant participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate at the hearing. As a result, no one represented the employer. Based on the administrative record 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 her employment for reasons that qualify her to receive unemployment insurance benefits, or did the employer suspend or lay off the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2004. The claimant worked with her husband as team over-the-road truck drivers.. When the claimant and her husband applied for the job, they indicated they preferred to drive in the Midwest region. When the claimant began her employment, the employer did not do any forced dispatches. The claimant and her husband did not have any problems with their assignments until May or early June 2005.

A new dispatcher started working for the employer in late May or early June 2005. This dispatcher asked the claimant and her husband to take loads to regions in the United States that the claimant and her husband did not want to drive and had not been asked to drive before. After declining some loads to the East Coast, the dispatcher ultimately assigned the claimant and her husband to take a load to Phoenix, Arizona. While on the way to Phoenix, the employer had the claimant and her husband stop in Oklahoma for a meeting.

During a June 29, 2005 meeting, the Oklahoma terminal manager informed the claimant's husband that the employer was laying off both of them because the employer changed its policy from a non-forced to a forced dispatch. The employer already had another driver lined up to take the claimant's load to Phoenix. The employer also immediately asked the claimant for her keys and told her to remove her personal belongings from the truck. The employer did not assign the claimant or her husband to another load until August 10, 2005.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she voluntarily quits employment without good cause or an employer discharges her for reasons constituting work-connected misconduct. Iowa Code §§96.5-1, 2-a. The record establishes that the claimant did not voluntarily quit her employment. Instead, the employer initiated the employment separation or layoff on June 29, 2005.

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 record does not establish that the claimant committed work-connected misconduct. The employer may have laid off the claimant for business reasons, but the record does not show that the claimant intentionally or substantially disregarded the employer's interests. Therefore, as of July 3, 2005, the claimant is qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's August 2, 2005 decision (reference 01) is reversed. The claimant did not voluntarily quit her employment. Instead, the employer laid off the claimant for reasons that do not constitute work-connected misconduct. As of July 3, 2005, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/s