

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL MILLER
Claimant

APPEAL NO: 14A-UI-00250-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

J L CHITTY GARBAGE SERVICE INC
Employer

OC: 03/24/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 6, 2014, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 30, 2014. The claimant participated in the hearing. Mike Chitty, President, participated in the hearing on behalf of the employer. Employer's Exhibits One through Six were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time driver/worker for J. L. Chitty Garbage Service from August 12, 2013 to December 16, 2013. He was discharged following three back injuries when the employer determined he could no longer perform the job.

The claimant had previous back injuries before starting work for this employer and injured his back the first day on the job. Consequently, he was off work August 13 through August 15, 2013, and then on light-duty until December 3, 2013, when he received a full release to return to work. The claimant also hurt his back while moving furniture at home November 21 and while eating when he reached across a table at home December 7, 2013. As a result of the last injury at home the claimant was off work from December 10 through December 14, 2013, and the employer requested a meeting with the claimant December 16, 2013. During the meeting the employer initially asked the claimant if he wanted to work only as a driver and the claimant replied that if that is what the employer wanted him to do he could do that. At the conclusion of the meeting, however, the employer stated there did not seem to be a way to work things out and the claimant's employment was terminated.

The employer was concerned because the claimant was a good employee and wanted to do his share, if not more, of the work and help the crew, which placed him at a greater risk of injury. The claimant agrees he was not always compliant with his physician's instructions because he

wanted to participate rather than sit back and let others literally do the heavy lifting. The employer thought the parties agreed the claimant would no longer continue in his job with the employer December 16, 2013,

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. 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).

In order for a separation to be considered a voluntary leaving of employment the claimant must have the intent to quit his job. In this case the claimant did not intend to leave his employment and would have accepted any job with the employer to maintain his employment. The employer originally offered the claimant a position of driver during the December 16, 2013, meeting but at

the end of the meeting told the claimant it did not appear there was any way for the parties to resolve the situation. The claimant had a bad back and the employer's concern is understandable. That said, however, the employer has not alleged any misconduct on the part of the claimant and the claimant clearly did not wish to leave his employment. Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving disqualifying job misconduct on the part of the claimant. Therefore, benefits must be allowed.

DECISION:

The January 6, 2014, reference 05, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs