

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLARENCE D DELOACH
Claimant

APPEAL NO: 10A-UI-00345-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J R B TARGET INC
Employer

OC: 11/29/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

J.R.B. Target, Inc. (employer) appealed a representative's December 30, 2009 decision (reference 01) that concluded Clarence D. Deloach (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2010. The claimant participated in the hearing. Karen Brown 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.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on March 9, 2009. His prior period of employment was not within the base period of his claim for unemployment insurance benefits. He worked full time as a short haul driver in the employer's trucking business. His last day physically working was on or about April 7, 2009.

On March 20 the claimant suffered a work-related injury to his foot. It was not determined until on or about April 7 that in fact he had broken his foot. As a result, he was taken off work and began receiving workers' compensation benefits.

On or about July 8 the employer learned from its insurance company that the insurance company would not cover the claimant on the employer's insurance policy. As a result, on or about that date the employer notified the claimant that he would not be able to return to his employment upon his recovery from his foot injury. The reason the employer's insurance company would not cover the claimant was the claimant's prior driving record. His most recent traffic ticket was in 2007, and as a result of his record he had lost his license in 2008. However, the employer was on notice of the claimant's entire record including the 2008 loss of his license

when it rehired the claimant on March 9, 2009. The employer had mistakenly assumed that the insurance company would not have an issue in covering the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is his lack of insurability by the employer's insurance company. However, the claimant committed no act during his current period of employment with the employer that triggered the decision not to extend coverage to the claimant. The employer was fully on notice of the claimant's driving record when it rehired the claimant. As a result, there is no current act as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988).

While the employer had a good business reason and virtually no choice but to discharge the claimant, it has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's December 30, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs