

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VINCENT F BROWN
Claimant

APPEAL NO: 14A-UI-03058-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPEE-DEE DELIVERY SERVICE INC
Employer

OC: 02/23/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Spee-Dee Delivery Service, Inc. (employer) appealed a representative's March 12, 2014 decision (reference 01) that concluded Vincent F. Brown (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 April 11, 2014. The claimant participated in the hearing. Aaron Lynch 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?

OUTCOME:

Affirmed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 1998. Since about November of 2010 he worked full time as branch manager of the employer's Ottumwa, Iowa location. His last day of work was February 13, 2014. The employer informed him on February 12, 2014 that he was being discharged. The reason asserted for the discharge was that the claimant was no longer able to perform the essential functions of the job, and that his disabilities and restrictions would only grow worse over the coming years.

The claimant had been injured at work on February 15, 2011. He had been continuing to work in his same position with various restrictions since about December of 2012, and was considered to be 39 percent disabled. The employer determined that it could no longer accommodate his restrictions. After he was informed he was to be discharged, on about February 13 the employer indicated that the only other possibility was for the claimant to take some other position at some other location that would require relocation, but no specific position

was offered to him. The claimant was informed that the only other location where there might have been some position was in St. Cloud, Minnesota.

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 inability to perform all of the functions of his job without accommodations. A discharge solely due to a physical inability to perform the duties of the job does not constitute misconduct, and does not in and of itself relieve the employer's account from charge. 871 IAC 24.32(5). While the employer may have had a good business reason for discharging 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 March 12, 2014 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/css