

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CURTIS E KELLEY
Claimant

APPEAL NO: 07A-UI-08689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

X. T. C. INC
EXTREME TRANSPORTATION CO INC
Employer

OC: 08/12/07 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

X. T. C., Inc./Extreme Transportation Company, Inc. (employer) appealed a representative's September 4, 2007 decision (reference 01) that concluded Curtis E. Kelley (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 September 26, 2007. The claimant participated in the hearing. Pat Delashmutt appeared on the employer's behalf and presented testimony from one other witness, Traci Newberg. 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:

The claimant started working for the employer on October 13, 2006. He worked full time as a salesperson in the employer's retail automobile sales business. His last day of work was August 13, 2007. The employer discharged him on that date. The reason asserted for the discharge was allegedly bluffing about having another job offer.

In early August the claimant had discussions with the employer regarding a desire to go to a strictly salary basis, rather than an at least partial commission basis. The employer had indicated that it did not believe that arrangement would be workable. The claimant continued to pursue the discussion, and in the week of August 6 had told the employer that another automobile dealership had made him an offer of employment, but that he would prefer to stay with the employer if a salary arrangement could be made. On August 10, one of the owners, Mr. Delashmutt, asked the claimant if he had made a decision on the other job offer yet, and the claimant responded that he had not, that he was going to wait until Monday, August 13, but still hoped an arrangement with the employer could be reached.

Later on August 10 the claimant was conversing with two other employees, one of which was Ms. Newberg, the office manager. The two employees understood the claimant as saying that they did not need to worry about him leaving, that he was bluffing and did not have a job offer. Ms. Newberg later reported this comment to Mr. Delashmutt. Mr. Delashmutt decided he did not appreciate the claimant trying to bluff him, so on August 13 discharged the claimant.

The claimant had been contacted by a representative of the other dealership several weeks prior to August 10 and at least a general offer of employment had been made, although all of the terms and conditions may not have been finalized. After the August 13 separation from the employer the claimant did follow up with the other dealership and completed the hiring process, beginning employment with that new employer on August 23.

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).

Iowa Code § 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 focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Henry, supra. The reason cited by the employer for discharging the claimant is the belief the claimant was bluffing about having another job offer. The claimant in fact did have another job offer; at worst the claimant “bluffed” to the other employees that he was “bluffing” about having a job offer. Under the circumstances of this case, the claimant's conduct was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion, as compared to intentional, substantial, or repeated misbehavior. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer 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 September 4, 2007 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