

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WALTER C CHRISTENSON
Claimant

APPEAL NO: 12A-UI-03461-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WORLDWIDE TRANSPORTATION
LOGISTICS INC**
Employer

**OC: 02/12/12
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 28, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. His attorney, Leanne Tyler, represented him.

The employer responded to the hearing notice and was called. Two people had been identified as the employer's witnesses. Carolyn Hassig, one of the identified witnesses, was available but reported that only Stephen Ramirez would be participating in the hearing. He was not available and she did not know where he was. A message was left for Mr. Ramirez that if he wanted to participate in the hearing, he had to contact the Appeals Section immediately. The Appeals Section 800-number was given to Hassig. Mr. Ramirez did not contact the Appeals Section to participate in the hearing.

During the hearing, Claimant Exhibits A, B, and C were offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. The claimant worked as a commercial truck driver. He worked an average of 52 hours a week until he was injured at work on February 4, 2011. The claimant injured his shoulder. The claimant filed a workers' compensation claim. The workers' compensation treating physician restricted the claimant from performing any work until October 28, 2011.

On October 28, 2011, the claimant's treating physician indicated it was unlikely the claimant could return to work as a commercial driver. The claimant's October 28, 2011 work release specifically stated he could not drive commercial vehicles. (Claimant Exhibit A.) After the claimant was released to work with work restrictions, the workers' compensation representative with the employer's insurance company told the claimant he would contact the employer about his restrictions and the employer would contact him if there was any work for the claimant.

The workers' compensation representative informed the employer in mid-January 2012 that as of October 28 2011, the insurance company started paying the claimant permanent partial impairment benefits. (Claimant Exhibit B.) The employer has told the claimant that the employer does not have any work for him.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. The facts do not establish that the claimant voluntarily ended his employment or even wanted his employment to end.

After the claimant was released to work by the treating physician on October 28, 2011, the worker's compensation representative, who works for the employer's insurance company, told the claimant he would contact the employer about his work release and restrictions. This representative told the claimant that if the employer had any work for the claimant to do, the employer would contact him. The employer did not contact the claimant. Even after the claimant established his claim for benefits, the employer indicated that the employer did not have any work for the claimant. Based on these facts, at a minimum, the claimant is laid off from work because the employer does not have work for him to do. For unemployment insurance purposes, this is an employment separation.

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 employer has not assigned the claimant another job because the claimant cannot perform the work he was hired to do as a commercial truck driver. This work restriction occurred as the result of a work-related injury. As a result, the claimant has not returned to work for the employer because he is no longer able to work as a commercial driver. The reason for the

claimant's employment separation does not constitute work-connected misconduct. As of February 12, 2012, the claimant is qualified to receive benefits.

The fact the claimant can no longer work as a commercial truck driver does not mean he is not able to do and available for other work. A claimant does not have to be able to do a former job; he only has to establish that he is able and available to do work that he has experience doing. The fact the claimant is not able to work as a commercial truck driver is not so restrictive that he is required to look for a tailor-made job.

DECISION:

The representative's March 28, 2012 determination (reference 02) is reversed. The claimant did not voluntarily quit his employment. Instead, after he was released to work by the employer's appointed workers' compensation physician, the employer did not have any nor offered the claimant any work. This resulted in the claimant being laid off from working for the employer. The claimant did not commit work-connected misconduct. As of February 12, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw