

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRITNEY E GRADY
Claimant

APPEAL NO: 11A-UI-12721-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TANTARA TRANSPORTATION CORP
Employer

OC: 03/06/11

Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer’s Account

STATEMENT OF THE CASE:

TanTara Transportation Corporation (employer) appealed a representative’s September 20, 2011 decision (reference 03) that concluded Britney E. Grady (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 October 19, 2011. The claimant received the hearing notice and responded by calling the Appeals Section on October 7, 2011. She indicated that she would be available at the scheduled time for the hearing at a specified telephone number. However, when the administrative law judge called that number at the scheduled time for the hearing, the claimant was not available; therefore, she did not participate in the hearing. Tracie Morgan appeared on the employer’s behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant discharged for work-connected misconduct? Is the employer’s account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer on July 26, 2011. She worked part time (about 32 hours per week) as a dispatcher. Her employment was only to be temporary, 90 days. Her last day of work was August 16, 2011. The employer discharged her on August 18, 2011. The reason for the discharge was that the claimant had been absent and late calling in on August 17, and that her position was temporary. On August 17 the claimant called in at about 9:00 a.m., about an hour after her scheduled start time; she reported that she had overslept, that she now did not have a ride, so that she would be absent the entire day. There had been no other incidents other than August 17.

The claimant established an unemployment insurance benefit year effective March 6, 2011. She reopened the claim by filing an additional claim effective August 14, 2011.

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).

Absenteeism can constitute misconduct; however, to be misconduct, absences must be both excessive and unexcused. 871 IAC 24.32(7). While the claimant's absence on August 17 was unexcused, it was the only occurrence; her absence that day was the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or was a good faith error in judgment or discretion. Eligibility for unemployment insurance benefits is not conditioned on whether the employment was permanent or temporary; the same standards regarding the separation from the employment are applied. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began October 1, 2009 and ended September 30, 2010. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's September 20, 2011 decision (reference 03) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css