

#### FINDINGS OF FACT:

The claimant started working for the employer on September 24, 2004. He worked as an over-the-road driver. Commer was the claimant's most recent fleet manager or dispatcher. During his employment, the claimant asked for a change in his dispatcher three times. The claimant also asked for different co-drivers. Prior to August 5, the claimant asked for a new co-driver and on August 5, the claimant told Commer he wanted a new dispatcher.

The employer's trucks have a messaging unit (Qualcom) in the truck so drivers can write messages the employer can see almost immediately. The truck the claimant and his co-driver drove did not have a functional Qualcom unit for most of July. On July 27, the claimant's truck had an operational Qualcom.

The employer requires drivers to submit a written request for a home stay two weeks in advance. In early July, the claimant's co-driver asked the employer for a home stay starting August 3 so he could attend a wedding. The claimant understood this was granted. On August 5, the employer received a message from the claimant's truck that the claimant and his co-driver would be taking a week off from work for a home stay. The employer communicated that this was not possible because a home stay had not been requested before but they could spend the weekend at home. After various messages on the Qualcom unit, Commer agreed the claimant and his co-driver could be off work until August 10, 2005. Although Commer believed the claimant was the person sending Qualcom messages about the home stay, it was the claimant's co-driver. After the employer received a Qualcom message that the two of them deserved a home stay and they were going to take it, Commer called the claimant. Initially, the claimant could not talk to Commer because he was driving. After the claimant pulled off, he contacted Commer again.

During this conversation, the claimant asked permission to get a tire repaired. Commer denied this request and told the claimant he had to drive to Okalahoma to get the tired repaired. After the claimant indicated this was against DOT regulations, the employer finally agreed this repair could be locally or in the area the claimant was currently at. The claimant also asked for a new dispatcher and stated he would go to upper level management to report the specific problems he had with Commer and his co-driver.

Commer contacted upper level management who talked to the claimant. The employer concluded the claimant had been insubordinate to Commer and failed to follow the employer's instructions because the employer concluded the claimant refused to return to work on Wednesday, August 10, 2005. The employer discharged the claimant on August 6, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. 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 asserted the claimant was discharged because he argued with Commer about not being authorized to take a home stay and refused to return to work on August 10, 2005. Since the claimant was driving when Commer called him after receiving several Qualcomm messages, the evidence establishes the claimant's co-driver sent the messages to the employer, not the claimant. While the claimant had some definite issues with Commer, the claimant was not bothered or upset about the length of time he would be home. The employer asserted the claimant was insubordinate regarding the home stay issue, which is not supported by the facts. While the employer had business reasons for discharging the claimant, the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits.

#### DECISION:

The representative's September 14, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of August 14, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf