

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DOUGLAS D MORRISON
318 - 3RD ST
WASHBURN IA 50706

WEST SIDE TRANSPORT INC
4201 - 16TH AVE SW
PO BOX 9129
CEDAR RAPIDS IA 52409-9120

Appeal Number: 05A-UI-08280-SWT
OC: 07/03/05 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 8, 2005, reference 02, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 29, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Judy Hannen participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The claimant worked full time for the employer as an over-the-road truck driver from March 26, 2004, to July 11, 2005. When the claimant was hired, he was informed that the truck he was issued was for him alone to drive and he was allowed to take it home on weekends when he was not driving.

Around the beginning of July 2005, the claimant was going on vacation. His supervisor told him that he would not be able to drive his truck home and leave it there while he was on vacation. The claimant asked whether that applied to weekends as well and the supervisor said that it might. The claimant did as he was told and did not take his truck home while he was on vacation. After his vacation, the claimant contacted his supervisor on July 11, 2005, and asked whether he would be allowed to take his truck home over the weekend. The supervisor told that he would only be able to do it if it did not take him out of route on his loads. The claimant complained about this and told his supervisor that felt he was being screwed since he had always been allowed to take the truck home before. The supervisor terminated the claimant for insubordination.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 substantial and 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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The employer's witness contended that the claimant told his supervisor to fire him so he could get unemployment insurance benefits. The claimant denied making such a statement. The claimant's testimony was credible and outweighs the employer's hearsay testimony. The claimant expressed anger and dissatisfaction when he was told that he could not take his truck home on weekends as he had in the past. This conduct does not rise to the level of disqualifying misconduct under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated August 8, 2005, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/pjs