IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRIAN S RAWLINGS
Claimant

B T INC
Employer

APPEAL NO: 11A-UI-01855-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/26/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 8, 2011 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at hearings on April 1 and 26, 2011. Jennifer Smith, Attorney at law, represented the employer at the hearing. Blaine Martin, the vice president of operations, and Brenda McNealey, the director of human resources, testified on the employer's behalf. During the hearings, Employer Exhibits One through Six and Claimant Exhibits A through F were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in February 2010. He worked as a full-time truck driver on a dedicated route. While the employer talked to the claimant about some complaints and gave him a written warning in July, (Employer Exhibit Three) the claimant's job was not in jeopardy before January 3, 2011.

The claimant went off duty the evening of December 29, 2010. Before he went off duty, he received a QUALCOMM message about making a delivery in Osceola on January 3, 2011. While the claimant was off duty, the customer made some changes and needed a delivery at Mason City instead of Osceola on January 3. The employer tried unsuccessfully to contact the claimant about this change. When the claimant was back on duty the morning of January 3, he did not know about the Mason City delivery until the employer called and talked to him that morning. (Claimant Exhibit E.) The employer assumed the claimant had listened to messages the employer left him while he was off duty, but the claimant did not know about the Mason City delivery. The employer changed the time of the Mason City delivery and charged the claimant a $25.00 late fee for his first late delivery.

On January 3, a driver from another company complained that the claimant swore at him while the driver waited in Marshalltown to get his truck washed. (Employer Exhibit One.) When the

claimant pulled up behind this driver in Marshalltown, he did not say anything right away even though the driver parked so the claimant could not fuel his truck. After the driver got out of his truck, the claimant asked if he was waiting to get his truck washed. After the driver told him yes, the claimant told him what doors he could move his truck to get his truck washed. For some reason the truck driver started swearing at the claimant. Other people in the area heard the driver swear at the claimant. (Claimant Exhibit C.)

Also, on January 3, after the claimant went to Mason City, the customer asked him to back up to a door and to deliver the product. The claimant understood he was not supposed to back up when he had a drop and load assignment, which this was. The claimant explained that he needed the employer's permission to do this. The claimant contacted the employer who verified this was a drop and load situation. (Claimant Exhibit B.) The claimant did back up to the dock the customer had asked him to and dropped the trailer at the dock. The customer complained that the claimant told him that it was not the claimant's job to back up to doors, instead it was the customer's the shag driver's job to do this. (Employer Exhibit One.)

After receiving the complaints on January 3, 2011, and considering the warnings the claimant received in March, July and November 2010, the employer discharged him on January 5 for unsatisfactory work performance and for violating the employer's conduct and work rules. (Employer Exhibits Five and Six.)

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).

Even though the employer considered the March, July and November 2010 incidents when deciding to discharge, the claimant's job was not in jeopardy for these incidents. Also, these incidents are different than what happened on January 3, 2011. Also, they are too remote in time to constitute a current act of work-connected misconduct. As a result, the discrepancies in the testimony concerning these incidents will not be addressed in this decision.

The claimant did not have a good start to 2011. First, the employer incorrectly assumed the claimant would find out before he went back on duty the morning of January 3 that he was to deliver to Mason City, and not Osceola. Even though the claimant had a habit of checking his messages, for some reason he did not know about the delivery site change until the employer called him the morning of January 3. By the time the claimant learned about the Mason City delivery, it was too late to meet the first delivery time.

The claimant cannot be totally blamed for the late delivery. Both parties were responsible for the late delivery. The employer should have made sure the claimant knew about the delivery change and the claimant should have checked with the employer before he went back on duty to see if there were changes. Since this was the first time the claimant had a late delivery, this one-time occurrence does not amount to work-connected misconduct.

The complaints the employer received about the claimant on January 3 are based on information from people who did not testify at the hearing. Therefore the employer's reliance on hearsay information cannot be given as much weight as the claimant's testimony. The claimant's testimony is credible. As result, the credible evidence does not establish that he swore at a driver waiting to get his truck washed in Marshalltown. Instead, the driver swore at the claimant for no logical reason. The facts do not establish the claimant acted inappropriately or that he committed work-connected misconduct when he did not swear at another driver in Marshalltown.

Although the Mason City customer complained that the claimant told him it was not job to back up and drop a trailer, the evidence indicates the claimant did not usually do this when he was on a drop and hook assignment. When the claimant contacted the employer about bumping at the dock, he was told this delivery should be a drop and hook like always. (Claimant Exhibit B.) Even though the claimant is in a service industry, the customer asked him to do something out of the ordinary that day. The claimant may have used poor judgment if he told the customer that it was the customer's shag driver's responsibility to back up the trailer to the dock, but his comments and conduct at Mason City on January 3 do not establish work-connected misconduct.

After learning about everything that happened on January 3, the employer reviewed the claimant's record. The employer established business reasons for discharging the claimant. None of the incidents individually or cumulatively constitute work-connected misconduct. Therefore as of December 26, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's February 8, 2011 determination (reference 03) is reversed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. As of December 26, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/css