

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

KATHY K AYERS
1640 B AVE
DAWSON IA 50066

MADDEN LTD
C/O MIKE MADDEN
2110 – 4TH ST
BOONE IA 50036-4437

Appeal Number: 04A-UI-03269-DWT
OC 02/29/04 R 02
Claimant: Respondent (1)

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 are 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:

Madden Ltd. (employer) appealed a representative's March 19, 2004 decision (reference 01) that concluded Kathy K. Ayers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2004. The claimant participated in the hearing. Al Irey, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

When the claimant started working for the employer in July 2003, her husband was already working for the employer. Before the claimant worked as a truck driver for the employer, the employer knew she had problems backing up a trailer. The employer did not believe this would create any problems since the claimant and her husband would be working as a team. In November 2003, the claimant started driving solo for the employer.

The first week of January 2004, a representative from Americold contacted the employer to report the claimant had hit an old pickup that was on Americold's property. During the conversation the employer learned the claimant had taken an extraordinarily long time to back up at least one time and another time had paid another driver \$5.00 to back up her trailer. The employer talked to the claimant about hitting the pickup at Americold. The employer was not billed for any damages that may have occurred when the claimant hit the old pickup.

On January 30, 2004, the trailer the claimant drove out of an IBP facility slid on ice and snow and sideswiped an on-coming pickup. The claimant did not realize she had hit anything as she left the facility. The employer received a report that the claimant's brakes had locked up and that the pickup had \$3,000.00 worth of damage done to it.

After the January 30, 2004 accident, the employer told the claimant she could no longer work for the employer.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges her 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 had business reasons for discharging the claimant after she was involved in two accidents in a month. The facts do not, however, establish that the claimant drove in such a way that she intentionally and substantially disregarded the employer's interests. The claimant was involved in two accidents in January 2004. She did not drive carelessly or recklessly. The claimant did not commit work-connected misconduct. Therefore, as of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 19, 2004 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of February 29, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/b