

**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**

**DONNA G OLSON  
1623 A ST SW  
CEDAR RAPIDS IA 52404**

**LILLIBRIDGE TRANSPORTATION INC  
2500 BING MILLER LANE  
URBANA IA 52345**

**Appeal Number: 04A-UI-04582-DWT  
OC 08/10/03 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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Donna G. Olson (claimant) appealed a representative's April 19, 2004 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Lillibridge Transportation, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 13, 2004. The claimant participated in the hearing. Lance Lillibridge, the president, 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:

The claimant started working for the employer on September 9, 2003. The employer hired her as a full-time over-the-road driver. The claimant understood she was initially hired as a probationary employee for 90 days.

The employer reviewed her performance after her first 90 days of employment. On January 2, 2004, the employer told the claimant her probation would be extended for another 90 days. During the first 90 days, the claimant had been involved in several accidents. The most recent one occurred on December 29 when the claimant hit a parked vehicle. The claimant agreed to pay for the damage so the employer would not have to turn it in to the insurance company. If the employer's insurance company paid for the damage, the employer knew coverage for the claimant would be cancelled. During the claimant's first 90 days, the employer also noticed on November 20, the claimant reported she was in Omaha, and could make a delivery in Mason City the next day. On November 21, the claimant told the employer she could not make the Mason City delivery on time because she had been in Grand Island, not Omaha as she had told the employer the day before. During the January 2 meeting, the employer warned the claimant that if she had any accidents, logbooks problems or any other problems the employer would discharge her.

On January 12, the claimant did not report to work because she overslept. In January and February 2004, the employer received calls from the owner of the vehicle the claimant damaged on December 29. He could not contact the claimant and was getting frustrated. Finally, the owner turned his claim over to the employer's insurance company. In January, the claimant hit a scale and caused some damage to the truck she drove. In early March, the claimant reported the dolly leg on her trailer would not roll up completely. The employer told the claimant where to get the dolly leg repaired. While the claimant was at the repair shop and telling the mechanic about the problem, the crank on the trailer accidentally hit the claimant in the head and knocked her down. The employer received information from the repair shop that the claimant had been told to stay out of the area where she had been injured.

On March 12, 2004, the employer discharged the claimant. The employer discharged her because she had not made satisfactory arrangements to pay for the damage she caused to a vehicle on December 29, the employer had to talk to her at least two times concerning log book problems and because of continued safety and customer relation issues.

#### 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 established compelling business reasons for discharging the claimant. For unemployment insurance purposes a discharge for misconduct cannot be based on a past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The facts establish the employer was not satisfied with the claimant's work performance after her first 90 days of employment. The employer, however, gave the claimant another opportunity by extending her probation on January 2, 2004. When the employer extended her probation, the employer warned the claimant she could not have any problems in her next 90 days of employment. The claimant, however, encountered problems during her extended probation. The evidence does not show that the claimant intentionally disregarded the employer's interests during her extended probation. The claimant may have used poor judgment, but this does not rise to the level of work-connected misconduct. The evidence does not establish the claimant committed a current act of work-connected misconduct. Therefore, as of March 24, 2004, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. Therefore, the employer's account will not be charged for any benefits paid to the claimant during her current benefit year.

**DECISION:**

The representative's April 19, 2004 decision (reference 03) is reversed. The employer discharged the claimant for compelling business reasons. These reasons do not constitute work-connected misconduct. Therefore, as of April 19, 2004, the claimant is qualified to receive unemployment insurance benefits, provided she meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

dlw/kjf