

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZLEH TOTAYE
Claimant

**DES MOINES REGIONAL TRANSIT
AUTHORITY**
Employer

APPEAL 19A-UI-07732-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/01/19
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Zleh Totaye (claimant) appealed a representative's September 26, 2019 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was discharged from work with Des Moines Regional Transit Authority (employer) for conduct not in the best interest of the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 23, 2019. The claimant participated personally. The employer participated by Danielle Gohr, Human Resources Manager, and Keith Welch, II, Maintenance Manager.

The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 17, 2018, as a full-time service person. He signed for receipt of the employer's handbook within two weeks of his hire. The claimant possessed a Class D commercial driver's license. He took his driving test using a bus.

On April 4, 2019, the claimant signed for receipt of a written counseling for driving over a guard rail on March 22, 2019. He did not cause damage but the employer considered it an unsafe act. The employer notified the claimant that further infractions could result in termination from employment.

On April 16, 2019, the claimant signed for receipt of a written warning for driving a bus into the garage on April 3, 2019, and making contact with the right side of the garage door frame. Minor damage occurred to the bus and the door frame molding. The employer placed the claimant in mandatory driver skill training on April 22, 2019, and May 9, 2019.

On May 31, 2019, the claimant suffered a work-related injury. He was released to full duty by the physician on July 23, 2019.

On July 31, 2019, the employer issued the claimant a verbal warning for using a cellphone at work. The claimant was confused about the employer's cellphone policy. The claimant understood his supervisor to allow use of cellphones for emergencies and during periods when there was no work.

On August 29, 2019, at 8:20 p.m., the claimant drove a bus into a garage for cleaning. He hit the side of the bus he was driving into the back of a parked bus. This caused in excess of \$3,000.00 in property damage. The claimant should have stopped his bus and contacted his supervisor when he encountered another bus blocking his path. On September 5, 2019, the employer terminated the claimant for having two preventable accidents in the few months since the claimant was hired.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986). Repeated unintentionally careless behavior of claimant towards subordinates and others, after repeated warnings, is misconduct. *Greene v. Employment Appeal Board*, 426 N.W.2d 659 (Iowa App. 1988).

The claimant clearly disregarded the standards of behavior which an employer has a right to expect of its employees. He repeatedly acted carelessly when driving the employer's vehicles, causing property damage. In five months, the claimant had three incidents that he should have avoided. He had two preventable accidents in five months. The claimant's actions are misconduct because they are recurrent and careless. They occurred after the employer issued the claimant warnings. The claimant was discharged for misconduct.

DECISION:

The representative's September 26, 2019, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn