

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK A BRAND
Claimant

NORTH CEDAR TRUCKING LLC
Employer

APPEAL 21A-UI-01831-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/30/20
Claimant: Respondent (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.3-7 – Overpayment
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

STATEMENT OF THE CASE:

North Cedar Trucking (employer) appealed a representative's December 23, 2020, decision (reference 01) that concluded Mark Brand (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 23, 2020. The claimant participated personally. The employer participated by Diane Poduska, Co-Owner. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from June 29, 2018, through July 27, 2020, as a full-time driver. He may have signed for receipt of the employer's handbook. The employer did not issue him any written or verbal warnings. The supervisor gave group warnings to employees.

The claimant drove mail between the sorting facility and the United States Post Office. He drove away from the facility when the expeditor from the postal service told him his truck was loaded.

On July 27, 2020, the supervisor told the claimant that the owner, Tom, said it was time to part ways. No reason was given for the termination. Later, the employer said it was for insubordination, for taking too long on a route, misunderstanding of a company route, and not

leaving the facility when the supervisor told him to go. The employer also wanted the claimant to return and work for the employer because the supervisor should not have terminated him.

The claimant filed for unemployment insurance benefits with an effective date of August 30, 2020. His weekly benefit amount was determined to be \$531.00. The department did not schedule a formal fact-finding interview. The representative called the employer on December 3, 2020, and left a message to speak with Holly Poduska. The employer did not respond. On December 8, 2020, the agency emailed the employer questions. The employer did not respond to the questions. The agency entered a decision on December 23, 2020.

The claimant received benefits of \$531.00 per week from August 30, 2020, to the week ending February 20, 2021. This is a total of \$13,275.00 in state unemployment insurance benefits August 30, 2020. He also received Federal Pandemic Unemployment Compensation.

REASONING AND CONCLUSIONS OF LAW:

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).

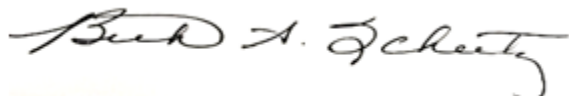
Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. In fact, the employer thought the supervisor should not have terminated the claimant. It wanted the claimant to return to work with the employer. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 23, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



Beth A. Scheetz
Administrative Law Judge

March 5, 2021
Decision Dated and Mailed

bas/mh