

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES R PAGEL
Claimant

APPEAL 20A-UI-01402-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 01/19/20
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant, Charles D. Pagel, filed an appeal from the February 12, 2020 (reference 02) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 4, 2020. The claimant participated personally. The employer, Decker Truck Line Inc., participated through Courtney Bachel, director of human resources. Rick George, vice president of safety, also testified.

Employer Exhibits 1-4 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road truck driver and was separated from employment on January 20, 2020, when he was discharged for excessive accidents.

The claimant began employment August 14, 2019 and was trained on employer rules and procedures at the time (Employer Exhibit 4). These included policies related to cell phone use, safety, progressive discipline and accidents (Employer Exhibit 3). He possesses a Class A CDL, which requires he also comply with certain Department of Transportation rules and regulations. He operated a 53 foot tractor-trailer that when loaded, could weigh up to 80,000 pounds. Prior to employment with this employer, the claimant had performed primarily work as a dedicated driver, which required less time management and navigation. The job duties were otherwise the same as it related to the size of vehicle and how he would operate a truck as an over-the-road driver versus dedicated.

On August 20, 2019, the claimant hit a parked car while on duty, causing approximately \$1,600.00 in damage to the other vehicle. The claimant acknowledged he should have waited until it stopped raining and did not. He participated in remedial training on August 20, 2019.

On October 2, 2019, the claimant received a verbal warning for text messaging while operating the employer's vehicle. This violated the employer's rules and DOT regulations.

On November 24, 2019, the claimant had a preventable accident when he backed up and hit a landscaping boulder, causing \$2,300.00 in damage.

He was placed on a six month probationary period for the accidents and for eight late loads he had. He was warned that further accidents could result in termination (Employer Exhibit 2).

On January 15, 2020, while turning into a truck stop, the claimant disregarded the "no left hand turn" sign, and caught a guard rail, causing \$5,000.00 in damage. He was also issued a law enforcement warning for an improper turn. Upon review of the claimant's safety record, including three preventable accidents in four months employment, he was discharged (Employer Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant was discharged after having too many accidents, which were deemed preventable. The claimant had three accidents in four months and each time the claimant caused property damage, ranging from \$1,600.00 to \$5,000.00. Each of the accidents were based upon the claimant not exercising due care, based upon a lack of following posted signs, or using his mirrors for guidance or not taking into consideration weather conditions when operating the truck. Regardless of whether the claimant had experience as an over-the-road driver, these accidents were based upon repeated negligence as a driver and not unique to an over-the-road position.

The credible evidence presented is that the claimant had been warned before about accidents and knew or should have known based upon the December 5, 2019 warning that another preventable accident would lead to discharge. The final accident on January 15, 2020 was due to the claimant not following a posted sign, and therefore preventable. Based on the evidence presented, the administrative law judge concludes the claimant’s negligence or carelessness was of such a degree of reoccurrence so as to manifest culpability under the provisions of the Iowa Employment Security Law. The claimant’s reoccurring negligence or carelessness was contrary to the employer’s interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Act. The administrative law judge concludes the employer has established by a preponderance of the evidence that the claimant willfully and wantonly disregarded the employer’s substantial interests or committed repeated negligence of equal culpability. Accordingly, the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The February 12, 2020, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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