

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FRANCES A STROHMAN
Claimant

WEINRICH TRUCK LINES INC
Employer

APPEAL 15A-UI-02226-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/26/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 9, 2015 (reference 02) that held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 23, 2015. Claimant participated personally. Employer participated by Steve Farrer, Safety Director.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on January 16, 2015. Employer discharged claimant on January 16, 2015 because claimant had been working as a truck driver and was involved in five accidents causing property damage during the two months she worked there.

Claimant began working on or about November 10, 2014. She was not an experienced driver. She was scheduled to receive training, and then begin driving during a four to six-week period. Claimant was allowed to drive a company vehicle during training so she could become accustomed to operating a large truck prior to driving her own designated route.

Claimant ran into a scale and caused damage to it on or about November 17, 2014. She had another accident on December 12, 2014 and she was given a warning and offered extra training on that date. Claimant was involved in an accident on December 26, 2014 when she misjudged a turn and got the trailer hung up in a ditch. On December 29, 2014 claimant did not hook the trailer to the truck properly and it broke free while she was driving causing damage to the vehicle. The final incident occurred on January 3, 2015 when claimant hit a light pole and damaged the vehicle.

Claimant caused over \$6000 worth of damage to company property during her two months of employment. Employer terminated her employment on January 19, 2015 after the final accident was investigated and it was found that claimant was at fault.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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, (4), and (8) provide:

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).

(4) Report required. The claimant's statement and the 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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. The Iowa Supreme Court has opined that one unexcused absence is not misconduct even when it followed nine other excused absences and was in violation of a direct order. *Sallis v. EAB*, 437 N.W.2d 895 (Iowa 1989). *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984), held that the absences must be both excessive and unexcused. The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Employer provided sufficient evidence of deliberate conduct in violation of company policy, procedure, or prior warning. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The decision of the representative dated February 9, 2015 (reference 02) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

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