

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

COLE C COLBERT

Claimant

APPEAL NO: 13A-UI-12593-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOE RUD TRUCKING INC

Employer

OC: 10/13/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Cole C. Colbert (claimant) appealed a representative's November 5, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Joe Rud Trucking (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 16, 2013. The claimant participated in the hearing and presented testimony from two other witnesses, Steve Dank and Jim Colbert. Joe Rud appeared on the employer's behalf and presented testimony from one other witness, Virgie Rud. 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:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer on May 23, 2013. He worked full time as an over-the-road truck driver. His last day of work was October 4, 2013. The employer discharged him on October 6, 2013.

The claimant had picked up a load in Wisconsin on October 1, made a partial delivery in Oklahoma on October 3, and then made a final delivery at 5:34 a.m. in a suburb of Dallas, Texas. He then planned to be on a 32 hour restart rest break. He fueled the truck at a local TA truck stop and then parked the truck off the roadway leading to the truck stop, as there was no room in the truck stop parking for his truck. He then spent his rest period first in the TA truck stop truckers' lobby, and eventually across the road in the Flying J truck stop truckers' lobby.

Sometime on October 5 the claimant noticed that the truck was gone from where he had parked it. First he thought that it might just have been towed from where he had parked it, and then determined that this was not the case. He contacted the security guard for the TA truck stop. He attempted to contact the employer, but was unable to reach the employer that day.

The employer had separately become concerned about the status of the truck because it had observed that the fuel card used by the claimant had been used twice within about a half hour during the afternoon of October 4 to charge over 500 gallons of fuel at a Quik Trip some miles away from the TA truck stop. The employer had tried to reach the claimant, but was unable to reach the claimant, and so had concluded that the truck had been stolen.

On the morning of October 6 the claimant again attempted to reach the employer, this time successfully. The claimant asked for the plate number for the truck so that he could make a police report; the employer advised him that this was not necessary as it had already reported the truck as stolen. The employer queried the claimant about how the fuel card had been used, and the claimant responded that the card had been left in the truck, and that there was sufficient documentation in the truck that someone else could have charged fuel with the card. The claimant then asked for assistance to get back to the employer's base in Minnesota, but the employer refused, indicating that the claimant was "on his own," and that he was discharged.

The claimant was able to catch a bus on October 8 and arrived in Minnesota on October 9. When he went to the employer's facility to pick up his car, which the employer had already had towed away, Joe Rud, president, told the claimant, within the hearing of his father, Jim Colbert, that the claimant was discharged "for losing my truck." The claimant provided testimony through an owner/operator truck driver, Dank, that the area of Dallas in which the truck had been stolen was notorious for truck thefts. No evidence was presented to establish by a preponderance of the evidence that the claimant was in fact complicit in the theft of the truck or the fuel card or the fuel that was charged on October 4.

It does not appear that the wage credits earned by the claimant in his employment with the employer, based out of Minnesota, were earned in and reported or reportable within the state of Iowa.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct

must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer discharged the claimant is that it held the claimant responsible for the theft of the employer's truck and the fuel card. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was responsible for the loss of the truck and card. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

As the employment was entirely outside the state of Iowa, the employer's chargeability for any benefits paid in any new benefit year and base period would be determined by the state in which those wage credits were accrued.

DECISION:

The representative's November 5, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css