

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THOMAS A GRANDINETTI
Claimant

APPEAL NO. 15A-UI-06168-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DAVENPORT
Employer

OC: 05/03/15
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Disciplinary Suspension/Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

City of Davenport (employer) appealed a representative's May 22, 2015, decision (reference 01) that concluded Thomas Grandinetti (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 scheduled for July 7, 2015. The claimant participated personally. The employer participated by Christina Murphy, Human Resources Manager; Kurt Scheible, General Manager of the Transit System; and Dawn Sherman, Director of Human Resources.

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 November 14, 2011, as a full-time transit operator. The claimant signed for receipt of the employer's handbook on November 14, 2011. On March 24, 2014, the employer issued the claimant a written warning for speeding and passing. On June 2, 2014, the employer issued the claimant a two-day suspension for unprofessional behavior. The claimant had a discussion with a co-worker after the co-worker said something about him. The co-worker was not reprimanded. The employer did not notify the claimant that further infractions could result in termination from employment.

The employer did not provide any training to the claimant regarding difficult passengers. On April 8, 2015, the employer sent a memo telling them to report abusive passengers to the dispatcher. If the situation dictated, the passenger would be banned from the bus and a picture of the passenger would be posted.

On April 11, 2015, a passenger called the claimant names when the claimant did not stop the bus where the passenger wanted. The claimant explained it was not safe and stopped the bus at a safe location to let the passenger off. The passenger complained he would have to walk six extra blocks. The claimant said, "Blah, blah, blah. Get a car." The passenger said, "I'm going

to kick your motherfucking ass.” The claimant pulled away from the passenger and started to drive away but thought he should notify the passenger he was being banned from the bus. He stopped and informed the passenger of the ban. The passenger said, “I’m going to kick your motherfucking ass.” “Get your ass out here right now.” The claimant called the dispatcher, gave his location, and asked for the police. The police arrived and banned the passenger from the Rock Island bus routes.

The claimant wrote the employer a note about the situation and provided a copy of the recording of the incident. The claimant asked that the passenger be banned from all routes. The employer viewed the recording and thought the claimant acted inappropriately. The employer suspended the claimant from work from May 4 to May 15, 2015.

The claimant filed for unemployment insurance benefits with an effective date of May 3, 2015. The employer did not participate in the fact-finding interview on May 21, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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 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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

An employer may suspend an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously trained the claimant how to deal with situations such as the one on April 11, 2015. There was no indication at the hearing that the claimant knew how to handle abusive customers other than to report them to dispatch and not cuss. The claimant followed those instructions.

The employer had not warned claimant about any of the issues leading to the separation. They were for arguing with a co-worker and traffic issues. The employer has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 22, 2015, decision (reference 01) is affirmed. The claimant was suspended from employment without establishment of misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/mak