

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TROY D PATTISON
Claimant

APPEAL NO: 20R-UI-06045-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ZIMMERMAN TRANSFER INC
Employer

OC: 02/09/20
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 3, 2020, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 15, 2020. The claimant participated in the hearing. Chris Zimmerman, Dispatcher, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time truck driver for Zimmerman Transfer from March 23, 2019 to February 12, 2020. He was discharged for insubordination and attitude issues.

On November 14, 2019, the claimant failed to go into a dairy farm parlor and subsequently pulled a hose out of the wall that was connected to one of the employer's trailers. The employer had to pay \$800.00 for a new hose and it issued the claimant a verbal warning and denied his quarterly incentive bonus.

On December 18, 2019, the claimant was told to plug in a spare trailer and failed to do so. The employer verbally warned the claimant and sent him a text message with a written warning because it did not physically see the claimant on a regular basis as they were in different states.

On January 1, 2020, the claimant disobeyed a customer's order and pulled a load that was short by 5,000 pounds so he could get holiday pay. The claimant's actions saved him 30-60 minutes so he did not pump those pounds. His decision affected other drivers scheduled as the next load was out of the time limit. Additionally, the claimant shorted the employer because it got paid by the weight and the expense was the same for less revenue.

On February 5, 2020, the employer believed the claimant refused a load and was insubordinate, a charge the claimant denies. The claimant asked for two Minneapolis loads February 5, 2020,

because he was going to begin his vacation in Minnesota. The parties had a misunderstanding when the claimant was doing his first load and called Dispatcher Max Zimmerman and asked if he was doing the load for Zimmerman Transfer or himself. The employer felt the claimant's comment was insubordinate and removed him from the second load because it believed it jumped "through hoops" to help the claimant with the Minnesota loads and he acted like he was doing the employer a favor instead of the other way around. The claimant testified he asked if the employer was doing him a favor because he wanted to know if the employer was going to have a continuous run to Minnesota because the claimant had informed the employer earlier that week he was moving to Minnesota.

The claimant was on vacation from February 6 to February 12, 2020, and his employment was terminated when he returned from vacation February 12, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

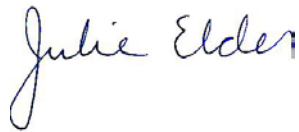
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant did accumulate three incidents of poor performance between November 14, 2019 and January 1, 2020, the final incident February 5, 2020, that resulted in the claimant's termination of employment, appears to be one of misunderstanding rather than insubordination. The claimant was trying to ask if the employer would have a dedicated route to Minnesota in the future because he had notified the employer he was moving to Minnesota but did so in a clumsy manner and left the employer feeling he had a poor attitude and was insubordinate. The claimant's actions February 5, 2020, do not rise to the level of intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The March 3, 2020, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

July 27, 2020
Decision Dated and Mailed

je/scn