

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN NOCILLA
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL 18A-UI-02532-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 13, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 22, 2018. Claimant participated. Employer participated through human resources representative Lea Peters and director of operations Jay Courtney.

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: Claimant was employed full-time as an over-the-road truck driver from January 25, 2017, and was separated from employment on January 26, 2018, when he was discharged.

The employer has a written policy that requires over-the-road truck drivers to act professionally with other employees. Claimant was aware of the policy.

Around January 23, 2018, Kent, claimant's driver manager, called him and asked him to check on his truck to make sure it is running and safe because of the cold weather. The truck is the employer's equipment, but is given to the over-the-road truck driver to perform their job duties. It is normal for the employer to request over-the-road truck drivers to check on their equipment to avoid damage to the equipment, including during cold weather. Claimant did not check on his truck.

On January 26, 2018, claimant met with Dan (a supervisor) and Kent at the employer to discuss the phone call that occurred between Kent and claimant around January 23, 2018. The employer wanted to explain the employer's policies and the professional behavior that is expected. At the start of the meeting, Dan and Kent sat down, but claimant refused to sit down. During the meeting claimant was talking with his hands, pacing, and yelling. Claimant told the employer he was not going to check on the truck because he would not get paid to check on the truck. The employer asked claimant not to yell. Claimant told the employer he was not yelling.

Claimant testified he is high-strung. Dan asked claimant to calm down, but he did not calm down. Mr. Courtney observed the meeting from outside the room and he could tell that claimant was agitated. Mr. Courtney observed claimant's motions were animated and as he got closer to the room, he could hear claimant yelling. Mr. Courtney also observed that claimant was the only one talking at that point. Mr. Courtney then entered the room and claimant stopped yelling. Mr. Courtney introduced himself to claimant and asked him to sit down. Claimant refused to sit down and started yelling again. The employer attempted to discuss the need for over-the-road truck drivers to check on the equipment. Mr. Courtney asked claimant to calm down, but he did not calm down. When claimant was near the door, he lunged towards Dan and pointed a finger at Dan. Mr. Courtney took claimant's lunging at Dan as a threat. Mr. Courtney told claimant that they were ending claimant's employment. Mr. Courtney discharged claimant because he could not get control of the situation. Claimant was unresponsive to the employer's attempts to get him to relax to have a discussion, and Mr. Courtney interpreted claimant's lunge as claimant escalating the situation. Mr. Courtney testified he believed claimant's lunging was a threat.

REASONING AND CONCLUSIONS OF LAW:

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

It is the duty of an administrative law judge and the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge, as the finder of fact, may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other evidence you believe; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy requiring over-the-road truck drivers to act in a professional manner is reasonable.

Claimant's argument that he was not yelling and he was not threatening Dan when he pointed at him is not persuasive. Mr. Courtney credibly testified that the reason he entered the room was because he observed claimant pacing, yelling, and appeared to be agitated with Dan and Kent. Claimant admitted he was upset during the meeting. Mr. Courtney also credibly testified that the employer, including Mr. Courtney, asked claimant to calm down, but he refused to follow the employer's instructions to calm down. Mr. Courtney further credibly testified that after claimant refused to calm down, he lunged towards Dan while pointing a finger at him. Claimant also admitted he pointed his finger at Dan.

The employer has presented substantial and credible evidence that claimant's conduct during the meeting was not professional and he escalated the situation when he lunged towards Dan. Mr. Courtney's interpretation of claimant's actions as an escalation and a threat was reasonable. The employer has a duty to protect the safety of its employees. The employer presented substantial and credible evidence that claimant's conduct was a "deliberate violation or disregard of standards of behavior which the employer has the right to expect of

employees[.]” Iowa Admin. Code r. 871-24.32(1)a. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The February 13, 2018, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs