

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Kirk C. Scheelhaase
Claimant

Decker Truck Line, Inc.
Employer

APPEAL 20A-UI-06267-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/12/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)a – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Kirk C. Scheelhaase filed an appeal from the June 11, 2020 (reference 02) unemployment insurance decision that denied benefits based. The parties were properly notified of the hearing. A telephone hearing was held on July 16, 2020. Scheelhaase participated personally and through attorney Al Sturgeon. Decker Truck Line, Inc. (Decker) participated through Courtney Bachel. Employer Exhibits 1 through 7 were admitted into evidence as was Claimant's Exhibit A.

ISSUE:

Did Decker discharge Scheelhaase for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Decker hired Scheelhaase on April 10, 2019. Scheelhaase worked full time as a driver. Decker discharged Scheelhaase on March 22, 2020.

Decker had in place the following cell phone policy during Scheelhaase's tenure:

The Federal Motor Carrier Safety Administration (FMCSA) restricts the use of all hand-held mobile devices by drivers of commercial motor vehicles (CMVs). This rulemaking restricts a CMV driver from holding a mobile device to make a call, or dialing by pressing more than a single button. CMV drivers who use a mobile phone while driving can only use a hands-free phone located in close proximity.

The use of a hand-held mobile telephone means:

Using at least one hand to hold a mobile phone to make a call;

Dialing a mobile phone by pressing more than a single button; or

Reaching for a mobile phone in a manner that requires a driver to maneuver so that he or she is no longer in a seated driving position, restrained by a seat belt.

Scheelhaase received a copy of the Decker handbook with this policy included in it.

Because discipline of a driver typically occurs while the driver is on assignment, Decker calls the driver to discuss the reprimand and follows up by mailing a letter to the driver's home. The parties do not dispute that Decker reprimanded Scheelhaase on two occasions before his discharge for violating the cell phone policy.

Decker reprimanded Scheelhaase twice for violating this policy. Decker strictly interpreted the cell phone policy. Both reprimands occurred because Scheelhaase was driving with one hand on his mobile phone. The second reprimand on March 12, 2020, included giving Scheelhaase a final warning that any similar conduct would result in discipline up to and including discharge.

On March 22, 2020, Scheelhaase was looking at his mobile phone while driving on a two-lane highway. His activities were recorded on a video, which is in evidence. Scheelhaase's multi-tasking diverted his attention from driving and caused him to cross the center line for some distance. He looked up to see an oncoming vehicle and steered the truck he was driving back into its proper lane.

Decker discharged Scheelhaase for violating company policy by driving a company vehicle while looking at his mobile phone.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes Decker discharged Scheelhaase from employment due to job-related misconduct.

Iowa Code section 96.5(2)(a) disqualifies an individual from unemployment insurance benefits if the employer discharged the individual for misconduct. The statute does not define "misconduct," but Iowa Administrative Code rule 24.32(1)(a) does:

"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.

The Iowa Supreme Court has consistently held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. *See, e.g., Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, (Iowa 2016) (superseded on other grounds by 2017 Iowa Acts ch.

70, § 3 (codified at Iowa Code § 96.5(11)) (citing *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 9 (Iowa 1982)).

The employer has the burden to prove misconduct that makes a claimant ineligible for unemployment benefits. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

Scheelhaase argues that the text of Decker's cell phone policy does not prohibit what he is recorded on video doing: Looking at a cell phone while driving a company vehicle. The problem with Scheelhaase's argument is that Decker reprimanded him twice for conduct that appears not to violate the letter of the rule. These reprimands put Scheelhaase on notice that Decker broadly interpreted the policy to prohibit continuously touching a cell phone while driving a company vehicle, let alone holding a cellphone in one hand and looking at it while driving a company vehicle on a two-lane highway. Because Scheelhaase was put on notice that Decker broadly interpreted the cell phone policy in such a way, Decker had a right to expect Scheelhaase to limit his handling of a cell phone in accordance with its interpretation of the policy.

Further, Decker's interpretation of the policy is reasonable. People can use cell phones to call, text, email, play games, watch videos, surf the internet, use social media, and more. Doing these things while driving is dangerous. Decker's interpretation of its cell phone policy was motivated by the desire for its drivers to drive safely. The video of Scheelhaase looking at his cell phone while driving, drifting across the centerline, and correcting his vehicle just before an oncoming car passed demonstrates how unsafe using a cell phone while driving can render a driver and his vehicle. Scheelhaase's conduct during the incident that led to his discharge was unsafe, putting himself and others at risk even if it did not ultimately result in a car crash causing injury or death.

Under Iowa law, an employer is entitled to establish reasonable work rules and expect employees to abide by them. Here, Decker has presented substantial and credible evidence that Scheelhaase violated its standards of conduct after having been warned on two occasions for lesser infractions. Despite these warnings, Scheelhaase continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The June 11, 2020 (reference 02) unemployment insurance decision is affirmed. Decker discharged Scheelhaase due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Ben Humphrey
Administrative Law Judge

July 29, 2020
Decision Dated and Mailed

bh/mh

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>