

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JULES C AGOUSSE
Claimant

FIRST FLEET INC.
Employer

APPEAL 20A-UI-14338-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/26/20
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 29, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 11, 2021, at 8:00 a.m. Claimant participated. French interpretation was provided by Moussa (ID# 10761) of CTS Language Link. Employer participated through David Olascoaga, Human Resources Generalist. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Truck Driver from August 2, 2019 until his employment with First Fleet ended on July 28, 2020.

Employer has a policy that prohibits an accident involving serious property damage, bodily injury or fatality. The policy states that such an accident may result in immediate discharge. The policy is included in the employee handbook. Claimant received a copy of the handbook.

On November 14, 2019, claimant was issued a written warning because he received a speeding citation. The warning stated that future violations of laws or preventable accidents may lead to additional discipline up to and including termination of employment.

On July 24, 2020, claimant drove his truck and trailer on an exit ramp at a speed of 37.5 miles per hour. The posted speed limit was 30 miles per hour. Truck drivers are trained to operate their trucks at ten miles less than the posted speed limit on an exit ramp. Claimant's truck and trailer rolled over while he was driving on the exit ramp, which resulted in property damage. Earlier that day, employer received an alert from claimant's truck regarding the stability of his trailer while claimant was driving on an exit ramp. Employer gave claimant a verbal coaching

about his speed on exit ramps. On July 28, 2020, employer discharged claimant for the roll-over incident on July 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct*. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

Claimant operated his truck and trailer in excess of the posted speed limit on an exit ramp resulting in property damage after receiving a written warning for speeding and a verbal coaching specifically regarding his speed on exit ramps. Claimant's actions were a deliberate violation or disregard of standards of behavior employer had a right to expect of claimant. Claimant was discharged for a current act of disqualifying work-related misconduct. Benefits are denied.

Because claimant's separation from employment is disqualifying, the issue of whether claimant is able to and available for work is moot.

DECISION:

The October 29, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible. The issue of ability to and availability for work is moot.



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January 28, 2021
Decision Dated and Mailed

acw/mh