

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRUCE L BOOCK
Claimant

APPEAL NO. 14A-UI-06050-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GCC ALLIANCE CONCRETE INC
Employer

OC: 12/22/13
Claimant: Appellant (2)

Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 6, 2014 (reference 02) that held claimant was denied unemployment insurance benefits. After due notice, a telephone hearing was held on July 7, 2014. Claimant participated. The employer participated by Ms. Tiffiany Farence, Human Resource Coordinator. Employer's Exhibits A, B, and C were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Bruce Boock was employed by GCC Alliance Concrete, Inc. from March 28, 2000 until May 13, 2014 when he was discharged from employment. Mr. Boock was last employed as a full-time bulk truck driver and was paid by commission. His immediate supervisor was Mr. Michael Becker.

The claimant was discharged on May 13, 2014 based upon a warning citation for speeding that he had received from law enforcement on April 15, 2014. Company policy provides for the automatic termination of an employee that accumulates ten disciplinary points during a 12-month rolling period. Company policy provides for a specified number of infraction points for various driving infractions. Under the policy that was implemented in March 2014, an employee who receives a citation, or a warning, for traveling six to ten miles per hour over the speed limit in a company vehicle receives five points and three days' unpaid suspension, (Employer's Exhibit C).

In its determination to discharge Mr. Boock, the employer attributed five infraction points to a warning for speeding that the claimant had received on December 17, 2013, although it appears that the company policy provided only for three infraction points for moving violations in a company vehicle at that time.

It is the claimant's position that he did not consider the warning tickets to be violations and maintains that his driving record is clear.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 a discharge case. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits.

See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

In the case at hand, the evidence in the record shows that at the time of the claimant's December 2013 warning for speeding, company policy provided for the assessment of three infraction points. In March 2014 the company policy changed and five points were then accessible for a warning that a driver received for speeding. For reasons that are unclear, the employer assessed five disciplinary points each for both violations resulting in the claimant's termination from employment. The evidence also does not establish any other act of potential misconduct that occurred between the claimant's warning for speeding on April 15 and his discharge on May 13, 2014.

The administrative law judge concludes, based upon the evidence in the record, that the claimant's infraction points were not properly assessed and the claimant did not have sufficient infraction points on May 13, 2014 to result in his discharge from employment under company policy. The administrative law judge also concludes that the claimant was not discharged for a current act of misconduct, as the final incident that caused the claimant's discharge had taken place approximately one month previously and there had been no intervening acts of misconduct on the part of the claimant.

While the decision to terminate Mr. Boock may have been a sound decision from a management view point, the evidence in the record does not establish misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated June 6, 2014 (reference 02) is reversed. Claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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