

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GALEN R WHITE**  
Claimant

**APPEAL NO. 14A-UI-02566-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHUSTER GRAIN CO INC**  
Employer

**OC: 02/02/14**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Galen White filed a timely appeal from the February 25, 2014, reference 01, decision that disqualified him for unemployment insurance benefits. After due notice was issued, a hearing was held on March 31, 2014. Mr. White participated. Keith Lamfers represented the employer. Exhibits A and B were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Galen White was employed by Schuster Grain Company as a full-time over-the-road truck driver from 2012 until February 6, 2014, when the employer discharged him for having too many accidents and/or safety issues while operating the employer's vehicle. Mr. White last performed work for the employer on February 2, 2014. On that day, Mr. White was operating the employer's tractor-trailer with the sun in his eyes when he collided with a stationary tractor-trailer unit parked on the side of the Interstate. The accident resulted in substantial damage and financial loss. In April 2013, Mr. White had caused minor damage to the employer's trailer while backing into a dock. Mr. White knew he should have gotten out of his trailer to ensure that his trailer was properly positioned before he finished backing, but he failed to make that check before he backed into the dock. In January 2012, Mr. White made an unsafe lane change, received a citation from law enforcement, and entered a guilty plea to that citation by paying the fine.

## REASONING AND CONCLUSIONS OF LAW:

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 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.

871 IAC 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.

The employer has the burden of proof in this matter. 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 is not necessarily serious enough to warrant a denial of unemployment 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. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's

power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes that Mr. White was indeed negligent in operating the employer's truck on February 2, 2014. That incident of negligence resulted in substantial damage and financial loss. The question becomes whether there was a sufficient pattern of carelessness and/or negligence to indicate a *willful and wanton* disregard of the employer's interests. The next most recent incident that factored into the discharge occurred in April 2013, when Mr. White neglected to check the position of his trailer before backing up to a loading dock and caused minor damage to the employer's trailer. The next most recent incident that factored in discharge occurred in January 2012, when Mr. White made an unsafe lane change. Despite the financial loss associated with the final incident, the evidence in the record fails to establish a pattern of carelessness and or negligent indicating a willful and wanton disregard of the employer's interests. There was a nine or 10 month space during between the second and final incident that factored in the discharge. There was a 15-month period between the first and second incident that factored in the discharge. These isolated incidents of negligence were not enough to establish misconduct in connection with the employment that would disqualify Mr. White for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. White was discharged for no disqualifying reason. Accordingly, Mr. White is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The claims deputy's February 25, 2014, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs