

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DWIGHT D JOHNSON**  
Claimant

**J B HUNT TRANSPORT INC**  
Employer

**APPEAL 21A-UI-03318-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/08/20**  
**Claimant: Respondent (5)**

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

**STATEMENT OF THE CASE:**

On January 19, 2021, J B Hunt Transport Inc. (employer/appellant) filed an appeal from the January 12, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on November 10, 2020 without a current act of misconduct.

A telephone hearing was held on March 23, 2021. The parties were properly notified of the hearing. Employer participated by Senior Manager of Operations Stephen Carl. Transportation Manager Dillon Maxson participated as a witness for employer. Dwight Johnson (claimant/respondent) did not register a number for the hearing and did not participate.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time driver. Claimant's first day of employment was March 4, 2019. The last day claimant worked on the job was August 8, 2020. Claimant's immediate supervisor was Maxson. Claimant separated from employment on November 10, 2020. Claimant was discharged on that date.

Claimant was discharged due to consuming alcohol within 12 hours of reporting for duty, in violation of employer's policies. Claimant was consuming alcohol at his sister's house on that date and fell down some stairs at her house. Claimant was groggy or confused at that time and was given a ride back to his work truck. Claimant did not operate the truck or check in to receive a load after that time. Claimant has a sleeper truck. The following morning, August 10, 2020 he was discovered groggy and incoherent at the terminal and was then hospitalized for several days as a result of his injuries.

Claimant was not discharged until nearly three months later because employer was waiting for a determination as to whether his injuries were work-related and whether the DOT would recertify him. After it was determined his injuries were not work-related and the DOT recertified claimant, employer discharged him.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the January 12, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on November 10, 2020 without a current act of misconduct is MODIFIED with no change in effect.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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 focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

The administrative law judge finds employer has not shown claimant reported for duty after drinking. The evidence instead indicates claimant was taken to his truck to "sleep it off" after he fell down the stairs at his sister's house and became groggy or confused. Claimant did not operate the truck or check in to receive a load after that time. To the extent claimant's return to his truck did constitute "reporting for duty," the administrative law judge does not find that claimant's doing so was willful. Someone else gave him a ride to the truck and the following morning he was discovered groggy and incoherent at the terminal. He was then hospitalized for several days as a result of his injuries.

Because the incident leading to the discharge did not constitute misconduct, the issue of whether it was a current act need not be addressed. Benefits are allowed, provided claimant is otherwise eligible. Because benefits are allowed, the issues of whether claimant has been overpaid benefits or employer should be charged need not be addressed, either.

**DECISION:**

The January 12, 2021 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was discharged on November 10, 2020 without a current act of misconduct is MODIFIED with no change in effect. The incident leading to discharge did not constitute misconduct. Benefits are allowed, provided claimant is otherwise eligible.



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March 30, 2021  
Decision Dated and Mailed

abd/scn