

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES L DAVIS
Claimant

APPEAL 24A-UI-00978-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY TRANSPORT INC
Employer

**OC: 12/24/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment
Iowa Admin Code r. 871-24.10 – Repayment/Chargeability

STATEMENT OF THE CASE:

The Employer/Appellant, Corkery Transport Inc, filed an appeal from the January 16, 2024 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 14, 2024. The claimant, Charles Davis, participated personally. The employer, Corkery Transport Inc, participated through witness, Ross Corkery. No exhibits were admitted. Notice was taken of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to the employer?
Was the claimant overpaid benefits?
Did the employer participate in the fact-finding interview?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a truck driver beginning on February 17, 2023. Cade Phillips was the claimant's immediate supervisor. The last day the claimant physically worked in the position was December 6, 2023. The claimant was discharged from employment on December 6, 2023 because the claimant caused damage to the vehicle on December 1, 2023.

On December 1, 2023 the claimant was operating his vehicle at a truck stop and turned too sharp causing his vehicle to strike another vehicle. A police report was issued citing the claimant as the party at fault in the accident.

The employer has a policy that damage to a vehicle while working as a truck driver may result in discharge from employment. The claimant was provided with the policy at the time he was hired during orientation. He signed off on receipt of the policy. Continuing work was available for the claimant had he not been involved in the accident causing damage to the truck.

Claimant was paid \$1,743.00 in regular unemployment benefits since the filing effective date of December 24, 2023. The employer did not participate in the fact-finding interview because the employer did not receive notice of the interview prior to the scheduled interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment but not for disqualifying misconduct. Benefits are allowed.

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(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 Dept of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the

claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

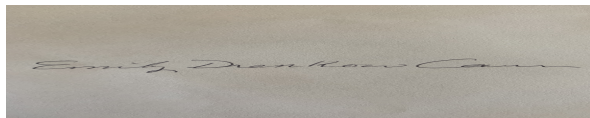
An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

Misconduct connotes volition. A failure in job performance which results from inability or incapacity is not volitional and therefore not misconduct. *Huntoon v. Iowa Department of Job Services*, 275 N.W.2d 445 (Iowa 1979). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988). The employer discharged the claimant for poor work performance and has the burden of proof to show evidence of intent. The employer did not provide any evidence of intent in the final incident which involved the claimant causing damage to the employer's property by making a turn which struck another vehicle. While it is true, the claimant caused the damage, the claimant did not intend in causing the damage. The claimant's poor work performance was the result of an error in turning his vehicle too close to another vehicle causing damage. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible

Because the claimant is eligible for benefits, the issue of overpayment and chargeability do not need to be addressed.

DECISION:

The January 16, 2024 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment but not for disqualifying misconduct under Iowa law. Benefits are allowed.



Emily Drenkow Carr
Administrative Law Judge

February 20, 2024
Decision Dated and Mailed

ed/rvs

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.