

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES D STOCKER

Claimant

APPEAL NO. 17A-UI-02918-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J B HUNT TRANSPORT INC

Employer

OC: 02/12/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Charles Stocker filed a timely appeal from the March 10, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Stocker was discharged on February 15, 2017 for having too many motor vehicle accidents for which he was deemed to be at fault. After due notice was issued, a hearing was held on April 14, 2017. Mr. Stocker participated. Francis Landolphi of Thomas & Company represented the employer and presented testimony through Tony Neiland. The administrative law judge took official notice of the documents submitted for and generated in connection with the fact-finding interview and labeled those materials D-1 through D-13.

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: Charles Stocker was employed by J.B. Hunt Transport, Inc. as a full-time commercial truck driver from December 5, 2016 until February 15, 2017, when Tony Neiland, Fleet Manager, and Tyler Bussberg, Operations Manager, discharged based on multiple instances in which Mr. Stocker's operation of the employer's tractor-trailer resulted in property damage or the potential for property damage. Mr. Stocker's work duties primarily involved hauling freight from Cedar Rapids to a rail yard in Chicago.

The final incident that triggered the discharge occurred on February 14, 2017, when Mr. Stocker took a wrong turn during Chicago rush-hour traffic, ventured onto a street where commercial trucks were prohibited and collided with a bridge. Mr. Stocker relied upon instructions provided by the in-truck GPS system, but did not fully read the street sign. The GPS instructions were to travel on Western Avenue. Mr. Stocker instead ventured onto Western Boulevard. Mr. Stocker noted "Western," but did not note "Boulevard." The two streets were adjacent. When Mr. Stocker ventured onto Western Boulevard, he did not observe the sign that prohibited commercial trucks. As Mr. Stocker traveled the street, he encountered an overhead bridge and

was able to safely maneuver under that bridge. However, another, lower bridge was located a short distance beyond the first bridge. Mr. Stocker did not see the lower bridge in time to stop his rig. The top of the freight container Mr. Stocker was hauling made contact with the bottom of the overhead bridge and was peeled back as it came into contact with the second bridge. Though the freight container was damaged, neither the tractor nor the trailer suffered damage. After the collision with the bridge, Mr. Stocker notified the employer and law enforcement. Law enforcement escorted Mr. Stocker to Mr. Stocker's next scheduled stop. Under the employer's policies, Mr. Stocker was expected to pull over and contact law enforcement for assistance if he erroneously ventured onto a street where trucks were prohibited. The policies were contained in the policy manual that Mr. Stocker received at the start of his employment.

The employer considered three other incidents when making the decision to discharge Mr. Stocker from the employment. On December 20, 2016, Mr. Stocker did not swing wide enough when making a turn as he was getting ready to park his truck at a truck stop and clipped another, stationary truck. In connection with that incident, the employer notified Mr. Stocker that he was being placed on probation. On December 29, 2016, Mr. Stocker parked and exited his truck after he had pulled the king pin to begin the process of releasing the trailer from the tractor's fifth wheel. Mr. Stocker had received a message from Mr. Neiland exited the truck to go see what Mr. Neiland needed. When Mr. Stocker returned to the truck, he forgot that he had pulled the king and started to drive in the tractor-trailer rig. The trailer slid off the back of the tractor and fell onto the front supports that were still in the raised position. No damage resulted from the incident. On February 3, 2017, Mr. Stocker ventured onto a grass field next to a customer's facility to make a turn and caused damage to the field. Mr. Stocker had ventured down a road where commercial trucks were prohibited, had seen what he thought was a gravel area, and had gone into the area to turn the tractor-trailer around. The employer customer complained to J.B. Hunt Transport regarding the damage caused to the grass yard at its facility. The employer counseled Mr. Stocker after each of the incidents.

REASONING AND CONCLUSIONS OF LAW:

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 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 weight of the evidence in the record establishes that each of the incidents that factored in the employer's decision to end the employment resulted from carelessness on the part of Mr. Stocker. While Mr. Stocker asserts that he was merely relying on the GPS system in connection with the final incident, the weight of the evidence in the record indicates that Mr. Stocker did not in fact follow the GPS instructions in that instance. The weight of the evidence indicates that a reasonable person in Mr. Stocker's circumstances would have pulled over and sought assistance after venturing onto an unfamiliar road with unmarked bridges ahead, regardless of the level of traffic. Mr. Stocker elected to take his chances and property damage resulted. While the final incident by itself would not have been sufficient to establish misconduct in connection with the employment, that pattern of careless, taken together, is sufficient to establish an intentional and substantial disregard of the employer's interests in safe and reasonable operation of the employer's equipment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Stocker was discharged for misconduct in connection with the employment. Accordingly, Mr. Stocker is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Stocker must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The March 10, 2017, reference 02, decision is affirmed. The claimant was discharged on February 15, 2017 for misconduct in connection with the employment based on a pattern of carelessness. The claimant is disqualified for unemployment benefits until he has worked in and paid wages for insured work equal to ten times his weekly benefit allowance. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn