

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL CARR
Claimant

APPEAL 20A-UI-13807-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHUSTER GRAIN CO INC
Employer

OC: 07/26/20
Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On November 2, 2020, Schuster Grain Co., Inc. (employer) filed an appeal from the October 26, 2020, reference 01, unemployment insurance decision that allowed benefits based upon the determination Michael Carr (claimant) was not discharged for willful or deliberate misconduct. The parties were properly notified about the hearing held by telephone on December 31, 2020. The claimant did not respond to the hearing notice and did not participate. The employer participated through Kristin Sitzmann, Safety Director. The employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim history.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits and, if so, can the repayment of those benefits to the agency be waived and charged to the employer's account?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Over-the-Road Truck Driver beginning on August 14, 2019, and was separated from employment on July 20, 2020, when he was discharged.

The employer requires employees to drive in a safe and appropriate manner. On September 13, 2019, the claimant was disciplined for his first operating error. He had made a wrong turn onto a gravel lane and got the truck stuck while trying to turn around. On October 5, while backing into a parking spot at a truck stop, he scratched a truck with his truck because he was too close. He received another disciplinary action. On February 10, 2020, the claimant received a disciplinary action and a citation for improper backing. He was backing into a parking spot and hit another vehicle.

The claimant received his final disciplinary action on April 14 after he dropped his trailer. The claimant failed to get out of his truck and verify the trailer had safely attached to the truck as is required. He was told that further incidents could result in the end of his employment. On July 19, the claimant was turning around in a parking lot and hit a cement pole causing physical damage to the truck. The employer discharged the claimant for five preventable accidents during his first year of employment.

The claimant has not received any unemployment insurance benefits since filing his claim for benefits effective July 26.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has presented substantial and credible evidence that the claimant continued to have preventable accidents after having been warned, which is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Accordingly, benefits are denied.

As the claimant has not received any benefits to date, the issue of overpayment is moot and the employer's account shall not be charged.

DECISION:

The October 26, 2020, reference 01, unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. As the claimant has not received any benefits to date, the issue of overpayment is moot and the employer's account shall not be charged.



Stephanie R. Callahan
Administrative Law Judge

January 19, 2021
Decision Dated and Mailed

src/mh