

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERIC BOTTORFF**  
Claimant

**EASTERN IOWA TIRE INC**  
Employer

**APPEAL 21A-UI-09513-ML-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/16/20**  
**Claimant: Appellant (1)**

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Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On February 4, 2021, Eric Bottorf (claimant/appellant) filed an appeal from the January 26, 2021 (reference 12) unemployment insurance decision that denied benefits based upon claimant's discharge from employment for job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on June 14, 2021. The claimant, Eric Bottorff, participated personally. The employer, Eastern Iowa Tire, Inc., participated through Jason Ross.

Claimant's Exhibit 1 was offered and admitted. Employer's Exhibits A through D were offered and admitted.

**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 the employer as a full-time sales associate. As a sales associate, claimant had to make telephone calls and deliver tires to his clients. Claimant's first day of employment was July 6, 2020. The last day claimant worked on the job was November 11, 2020. Jason Ross was claimant's immediate supervisor.

The employer provides its employees with a company vehicle. Expectations regarding the use of the company vehicle were detailed in an employee handbook, which claimant received on July 6, 2020. The employer receives GPS reports each morning of the routes taken by employees in said vehicles. The reports provide time and date stamps for each stop the vehicles make. Several of claimant's driving logs were offered and admitted into the evidentiary record.

The final incident which led to claimant's discharge occurred on or about November 10, 2020. Claimant was driving a company vehicle on the date in question. The employer reviewed the

routes claimant was taking via GPS and concluded the routes taken were inefficient. Mr. Ross further determined that claimant was utilizing the company vehicle to take care of personal matters on company time. The issue was brought to Mr. Ross' attention by owner Gary Van Blaricom. Mr. Ross had engaged in several conversations with claimant regarding the above issues prior to his termination. Claimant admitted to participating in at least one conversation with Mr. Ross and Mr. Van Blaricom about his use of the company vehicle and expectations regarding the same. He did not perceive the conversation as a warning or reprimand.

During the time period in question, claimant was dealing with some personal issues. Mr. Ross was aware of claimant's situation, and, at times, approved of claimant utilizing the company vehicle for personal appointments. That being said, claimant was supposed to notify Mr. Ross of his appointments ahead of time and seek approval for the same. Mr. Ross testified that claimant occasionally utilized the company vehicle, and company time, for unauthorized, personal matters. Claimant received verbal and written warnings for the same on a number of occasions.

Claimant asserts his routes were sporadic because he was not provided with a list of clients or a client book with which he could use to "draw" better, more efficient routes. Claimant would later admit that the employer had provided him with a list of clients; however, claimant believed the list he received was only a small portion of a much longer list of clients. Claimant further asserts that he properly reported each of his anticipated absences to Mr. Ross.

The evidentiary record contains several written warnings. On November 4, 2020, claimant received his third and final warning for attendance issues. According to the reports, claimant was late to work on October 30, 2020, and he no call/no showed on both November 2, 2020 and November 3, 2020. Claimant asserts he was late for work on October 30, 2020, because he was meeting with his attorney. Claimant was placed on probation and notified that any additional incidents would result in his discharged from employment. The report further provides that claimant received his first warning on October 12, 2020. Claimant received his second warning on October 30, 2020.

On November 11, 2020, claimant received a third and final warning for two separate incidents of violating company policies or procedures. On November 6, 2020, claimant parked his company vehicle at home at 4:25 p.m., or 35 minutes before the end of his shift. The written notice provides that Mr. Van Blaricom had just recently talked to claimant about his need to work from 8:00 a.m. to 5:00 p.m. on November 5, 2020. According to the second written warning, claimant did not return home with the company vehicle until 7:42 p.m. on November 9, 2020. The employer surmised that claimant was utilizing the company vehicle for personal matters between 5:00 p.m. and 7:42 p.m.

Mr. Ross discharged claimant on November 11, 2020. Claimant declined to sign the termination paperwork. At hearing, claimant presented himself as a personable individual. It was clear he was appreciative of the opportunity to work with Mr. Ross and the employer.

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

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

As a preliminary matter, I find that the Claimant did not quit; rather, the claimant was discharged from employment. The representative's January 26, 2021, decision provides claimant was discharged from work on November 11, 2020, for excessive absences from his work area without having the proper authorization.

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).

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.

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).

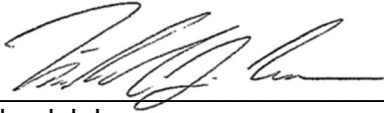
Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by 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).

The employer has 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). Claimant repeatedly utilized the employer's vehicle to handle personal matters during his normal work hours after being warned against the same. This was a deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, including claimant. Moreover, claimant had received a third and final warning for attendance issues prior to his termination.

**DECISION:**

The January 26, 2021 (reference 12) unemployment insurance decision is AFFIRMED. 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.



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Michael J. Lunn  
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July 9, 2021  
Decision Dated and Mailed

mjl/kmj