

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NARIMSEEN A EESHA
Claimant

HUMMEL'S NISSAN
HUMMEL BROTHERS INC
Employer

APPEAL NO. 19A-UI-08279-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/29/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Narimseen Eesha filed a timely appeal from the October 16, 2019, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Eesha was discharged on September 30, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on November 12, 2019. Mr. Eesha participated. Denny Fedosa represented the employer and presented additional testimony through John Stokka. Exhibit A was received into evidence.

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: Narimseen Eesha was employed by Hummel's Nissan as a full-time Inventory Manager from 2015 until October 1, 2019, when the employer discharged him from the employment. Mr. Eesha last performed work for the employer on September 28, 2019. Mr. Eesha's work duties required him to operate customers' motor vehicles and the dealership's motor vehicles on a daily basis. Mr. Eesha knew at all relevant times that his continued employment was contingent upon him maintaining a valid driver's license and driving privileges.

On September 30, 2019, Mr. Eesha operated his private vehicle at a time when he was off work and under the influence of alcohol. A Norwalk police officer stopped Mr. Eesha's vehicle and conducted field sobriety tests that included a preliminary breath test (PBT) that indicated a breath alcohol content that exceeded the legal limit. The Norwalk police officer arrested Mr. Eesha and transported Mr. Eesha to jail. At the jail, Mr. Eesha submitted to implied consent breath alcohol testing that confirmed his breath alcohol concentration exceeded the legal limit. The law enforcement officer served Mr. Eesha with an Iowa Department of Transportation notice of license revocation. The notice stated that the revocation would begin 10 days from issuance of the notice and that the revocation would remain in effect for 180 days. A separate Iowa Department of Transportation Document addressed Mr. Eesha's eligibility for a temporary restricted license that would allow him to travel to and from work. That document stated that

Mr. Eesha would first have to install an ignition interlock device, provide proof of liability insurance, and pay applicable civil penalties before he could be considered for a temporary restricted license. Even with the temporary restricted license, Mr. Eesha would not be able to operate customers' vehicles or the dealership's vehicles unless an ignition interlock device was installed in each vehicle he operated. On September 30, 2019, Mr. Eesha notified the employer of the arrest and impending loss of his driving privileges. On October 1, 2019, the employer notified Mr. Eesha that he was discharged from the employment.

REASONING AND CONCLUSIONS OF LAW:

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 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).

In *Cook v. Iowa Department of Job Service*, 299 N.W.2d 698 (Iowa 1980), the Iowa Supreme Court held that when a truck driver lost his insurability because of traffic tickets he accumulated, and thereby lost his ability to perform his driving duties, the loss was self-inflicted and constituted misconduct in connection with the employment. In *Cook*, the claimant’s employment required that he be able to operate motor vehicles. Through commission of traffic offenses and resulting convictions, the claimant rendered himself incapable of continuing in the employment.

The evidence in the record establishes a discharge for misconduct in connection with the employment. The evidence establishes that Mr. Eesha elected to operate a motor vehicle on September 30, 2019 while he was under the influence of alcohol. That conduct triggered the revocation of Mr. Eesha’s driving privileges and made it impossible for Mr. Eesha to continue to perform the driving duties that were essential to the employment. Mr. Eesha’s self-inflicted loss of his driving privileges constituted misconduct in connection with the employment. Mr. Eesha knew at all relevant times that his driver’s license was critically important to the employment. His decision to place his driving privileges in jeopardy by operating a motor vehicle while under the influence of alcohol demonstrated an intentional and substantial disregard of the employer’s interests. Mr. Eesha is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Eesha must meet all other eligibility requirements. The employer’s account shall not be charged for benefits.

DECISION:

The October 16, 2019, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The discharge was effective October 1, 2019. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. 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