

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DRAMANE TRAORE
Claimant

SCHNEIDER NATIONAL CARRIERS INC
Employer

APPEAL 16A-UI-05573-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 04/10/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 11, 2016, (reference 02) unemployment insurance decision that denied benefits based upon his discharge for having too many accidents. The parties were properly notified of the hearing. A telephone hearing was held on June 3, 2016. The claimant, Dramane Traore, participated and testified. The employer, Schneider National Carriers Inc., participated through driver business leader, Chris Neipert.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a driver from June 17, 2015, until this employment ended on April 1, 2016, when he was discharged.

On March 31, 2016, claimant was driving in rainy conditions when he lost control of his truck and got into an accident. Claimant attempted several maneuvers to regain control, but was unsuccessful. The posted speed limit was 65 mph; at the time of the accident claimant was traveling 57 mph. The employer initially believed claimant had been traveling with the cruise control on. The claimant denied this allegation and stated that the truck disables the cruise control when the windshield wipers are on. Neipert testified that it was possible that claimant was correct in this statement and that he was only speculating about the cruise control. After investigating the accident the employer determined, that even though claimant was driving below the posted speed limit, he was still driving too fast for the conditions, as evidenced by the fact that he lost control of his vehicle. Neipert notified claimant on April 1, 2016, via telephone that he was being separated from employment. Prior to this incident, claimant had been involved in one other accident, in July 2015. That accident involved claimant hitting a fixed object while making a right turn and did not involve any disciplinary action or warning.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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 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).

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application

of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was an isolated incident. Claimant was driving in the rain almost ten miles per hour below the posted speed limit and attempted several maneuvers to prevent the accident when he began to lose control of his truck. Even assuming claimant was careless, the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016).

Prior to his termination, claimant was only involved in one other accident and received no disciplinary warning following that accident. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The May 11, 2016, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs