IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANDREW C BURNS Claimant **DECKER TRUCK LINE INC** Employer	**APPEAL 16A-UI-07350-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/05/16** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 27, 2016 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment for insubordination in connection with his work. The parties were properly notified of the hearing. A telephone hearing was held on July 21, 2016. The claimant, Andrew C. Burns, participated personally. The employer, Decker Truck Line Inc., was represented by Attorney Eric S. Fisk and participated through Vice President of Human Resources Brenda McNealey; Health and Benefits Manager Andrea Kloberdanz; and Terminal Manager David Zohner. Claimant's Exhibits A and B were admitted. Employer's Exhibits 1 – 3 were admitted.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an over the road truck driver. Claimant was employed from August 27, 2014 until April 27, 2016 when he was discharged from employment.

This employer has a written policy which states that no animals of any kind will be allowed under any circumstances in any truck cabs operated by or leased to Decker Truck Line, Inc. There will be no exceptions to this policy. See Exhibit 1. The claimant was aware of this written policy.

On April 13, 2016 claimant spoke with Ms. McNealy and Ms. Kloberdanz about him having a dog with him while driving. During this telephone conversation claimant contended that he suffered from claustrophobia. Claimant denied that he suffered from anxiety. Ms. McNealy stated that claimant needed to provide medical documentation regarding this condition and documentation showing that the dog was a registered service dog. Claimant told Ms. McNealy that he did not have to provide that documentation to the employer. Ms. McNealy further stated that claimant would not be allowed to have the dog in the truck until she received the requested documentation and was able to review whether or not she could grant an exception to the

employer's written policy. Claimant did not indicate in any way that he would send the documentation to her.

Prior to this conversation the claimant had submitted to a physical in 2014 and 2015. Claimant also completed a questionnaire regarding his physical and mental health. Claimant never disclosed his medical condition of claustrophobia to the employer until the April 13, 2016 telephone conversation.

Claimant contends that he was diagnosed with stress in February of 2016 by his primary care physician. No written documentation was offered from claimant's physician regarding this diagnosis.

Claimant contends that his dog was registered as a service dog with Service Dogs America in February of 2016. See Exhibit A. Claimant trained the dog himself and the dog has received training from others as well. Claimant contends that his service dog is needed for his diagnosis of stress and not his diagnosis of claustrophobia. Claimant did not testify as to what tasks or services the dog actually provides to him as it pertains to his stress. Claimant testified that the dog reduces his blood pressure by being in his presence. However, claimant does also take blood pressure medication.

On April 27, 2016 claimant arrived at the terminal in Montana to drop his truck off for servicing. Claimant arrived with the dog in the truck with him. Mr. Zohner observed that the claimant had the dog with him, in violation of the employer's written policy, and immediately discharged him from employment.

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. Claimant was discharged from employment.

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).

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.

Further, 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). 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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the

evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that the testimony of the employer's witnesses' are more credible than claimant.

Iowa Code § 216.6(1)(a) provides that it shall be an unfair or discriminatory practice for any person to discharge any employee because of the disability of such employee. An employer is required to make "reasonable accommodations" for employees with disabilities. "Disability" means the physical or mental condition of a person which constitutes a substantial disability, and the condition of a person with a positive human immunodeficiency virus test result, a diagnosis of acquired immune deficiency syndrome, a diagnosis of acquired immune deficiency syndrome-related complex, or any other condition related to acquired immune deficiency syndrome. The inclusion of a condition related to a positive human immunodeficiency virus test result in the meaning of "disability" under the provisions of this chapter does not preclude the application of the provisions of this chapter to conditions resulting from other contagious or infectious diseases. Iowa Code § 216.2.

Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

In this case claimant did not provide any documentation that he has been diagnosed with claustrophobia or an anxiety disorder except his own testimony, which is not credible. Claimant contends that he has suffered from claustrophobia for several years, including prior to his employment with this employer. However, claimant did not disclose this condition during either of his employment physicals or when asked to do so when completing the employer's health questionnaire.

Claimant contends that he was diagnosed with stress by his primary physician in February of 2016. This was not discussed with the employer until the April 13, 2016 telephone call. However, during that call claimant stated that he was not diagnosed with an anxiety disorder and that the dog was needed as a service dog for his claustrophobia. Claimant testified at the hearing in this matter that the dog was needed as a service dog for his stress. While medical documentation is not necessarily required, it is important to note that no medication documentation was provided from claimant that the dog was needed for either alleged disorder.

Claimant's inconsistent testimony regarding any diagnosis of his alleged disabilities and his inconsistent statements as to which disorder required the need for the dog make his testimony unbelievable. Claimant has failed to prove that he suffers from a mental condition which constitutes a substantial disability, especially in light of the fact that claimant worked for this employer without the dog for almost two years while he contends he was diagnosed with claustrophobia and for two months while he contends he was diagnosed with stress.

The employer can make reasonable requests for documentation of a medical diagnosis when an employee requests a reasonable accommodation, especially when claimant's statements are inconsistent. The employer in this case did just that and claimant refused to provide any documentation regarding his medical conditions or the medical need for the animal. Claimant

then intentionally disregarded the employer's policy by having the dog with him while he drove the truck to Montana.

One of the purposes of the employer's policy is for the safety of its employees and the general public. The other purpose of the policy is to protect the employer's property from being damaged by an animal. An employer has a right to expect that an employee will not jeopardize his or her own safety or the safety of others by violating the employer's safety policies.

There is substantial evidence in the record to support the conclusion that claimant deliberately violated the written policy in this case. To establish misconduct that will disqualify and employee from unemployment compensation benefits, the employer must prove conduct by the employee which consisted of deliberate acts or omissions or evinced such carelessness as to indicate wrongful intent. It should not be accepted as a given fact that an employer's subjective standards set the measure of proof necessary to establish misconduct; to do so skews procedure, forcing employees to prove that they are not capable of doing their job or that they had no intent to commit misconduct, thereby impermeably shifting the burden from employer to employee. *Kelly v. Iowa Dept. of Job Service*, 386 N.W.2d 552 (Iowa App. 1986).

The final incident involved a deliberate violation of the employer's written policy, which claimant had knowledge of. Claimant's action of failing to follow the employer's policies regarding not having an animal in the truck constitutes an intentional and substantial disregard of the employer's interest. This conduct rises to the level of willful misconduct. As such, benefits are withheld.

DECISION:

The June 27, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

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