

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA J WALES
Claimant

GRAY TRANSPORTATION INC
Employer

APPEAL 16A-UI-11414-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 18, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged due to violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on November 4, 2016. The claimant, Pamela J. Wales, participated. The employer, Gray Transportation, Inc., participated through Darrin Gray, president. Claimant's Exhibit A, B, and C were received and admitted into the record.

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, most recently as a dedicated truck driver, from July 27, 2016, until September 15, 2016, when she was discharged. On September 8, claimant was at one of the four Waterloo Warehouse sites, either making or retrieving a delivery. Both parties agree that claimant pulled away from the dock with a forklift and a forklift driver still in the trailer of her vehicle. Claimant discovered this when she got out of the truck and went back to the trailer to close the door. Gray testified that anytime a driver is at a dock, that driver should be on the dock watching the load or unload take place. Gray also testified that each site where drivers deliver or load posts safety procedures for the drivers who come onto the property. Claimant testified that the Waterloo Warehouse site she visited on September 8 had no procedures posted. Claimant admits that she did not visually verify the status of her trailer before pulling out. She explained that 99% of the time, drivers are not allowed on the dock to watch the load or unload occur. Claimant explained that she believed the trailer was empty because she did not feel any movement from the forklift going in and out, and no one responded when she went into the warehouse and yelled. Claimant did not visually verify that her trailer was empty before she pulled away from the dock.

Immediately after the incident occurred, the owner of Waterloo Warehouse called Gray and reported the "severe incident" that occurred. The owner told Gray that claimant was not permitted to return to any of the four Waterloo Warehouse sites. According to Gray, these four sites comprise the majority of claimant's work. After Gray spoke to the owner, he contacted the

dispatcher and asked claimant to call in. When Gray spoke with claimant, she apologized and told him that she did not see the forklift and driver until she went back to close the doors. Gray testified that claimant's actions could have resulted in death and severe property damage.

In August 2016, Claimant was banned from a customer site in East Moline, Illinois. According to Gray, claimant was repeatedly parking her truck and trailer in an unauthorized location and became upset each time she was instructed to move the vehicle. After the customer banned claimant from coming onto its property, Gray spoke to her. He informed her that she was no longer permitted to work for that customer and he informed her that her job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

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

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 the employer's version of events more credible than claimant's version of events.

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). 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). 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). 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).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring employees follow safety laws while operating a company vehicle. The employer has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public by pulling away from the dock when her trailer still contained a forklift driver and his forklift. Claimant's conduct could have killed the driver, or severely injured the driver and the forklift. As stated above, claimant's version of events leading up to her discovery of the driver and forklift is not believable. Claimant's actions amount to misconduct even without prior warning or specific policy violation. Benefits are withheld.

DECISION:

The October 18, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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