

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

RANDY L FAIRCHILD
Claimant

APPEAL NO. 10A-UI-01611-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 12/27/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 25, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on May 11, 2010. Claimant participated personally and was represented by attorney Katie Naset. Attorney Jennifer Smith represented the employer and presented testimony through Sandy Loney, Michael Erritt and Doreen Copping. Exhibits One, Two, Three, and E were received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Randy Fairchild was employed by Decker Truck Line as a full-time over-the-road truck driver from August 2008 until December 28, 2009. On December 14, Mr. Fairchild suffered an acute decrease in blood pressure that necessitated medical evaluation. Mr. Fairchild was released to return to work on December 23. On that day, Michael Erritt, Director of Operations, contacted Mr. Fairchild about returning to work. Mr. Fairchild indicated a preference to start back after Christmas.

On Monday, December 28, Mr. Erritt and Sandy Loney, Director of Human Resources, contacted Mr. Fairchild by telephone about his return to work and about some voicemail messages Mr. Fairchild had left in the preceding days suggesting that the employer had discharged him from the employment. During the telephone call, Mr. Fairchild reaffirmed his desire to return to the employment, but insisted that the employer had ruined his Christmas holiday. Mr. Fairchild became increasingly frustrated and terminated the telephone call before the employer was finished speaking to him. Ms. Loney immediately followed up with a telephone call to Mr. Fairchild and left a message indicating that the employer interpreted the telephone hang-up as a voluntary quit. From that moment on, the employer insisted that Mr. Fairchild had voluntarily quit the employment. The employer followed up with a letter on

December 28 reaffirming the employer's position that Mr. Fairchild had voluntarily quit without good cause attributable to the employer.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record establishes a discharge from the employment, not a voluntary quit. At no point did Mr. Fairchild tell the employer that he intended to voluntarily separate from the employment. In fact, Mr. Fairchild specifically indicated his desire to continue in the employment during a telephone conversation that occurred on December 28. The employer unreasonably took the position--after Mr. Fairchild hung up the phone in frustration--that Mr. Fairchild had quit. A reasonable person would not have concluded from Mr. Fairchild's early termination of the phone call that he intended to effect a separation from the employment. Mr. Fairchild had taken no other overt steps to indicate an intention to separate from the employment. The weight of the evidence indicates that the employer retaliated against Mr. Fairchild, in response to his early termination of the phone call, by ending the employment at that moment.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in a discharge 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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence indicates that while Mr. Fairchild's early termination of the phone call on December 28 was discourteous, it did not involve misconduct in connection with the employment such as would disqualify Mr. Fairchild for unemployment insurance benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Fairchild was discharged for no disqualifying reason. Accordingly, Mr. Fairchild is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Fairchild.

DECISION:

The Agency representative's January 25, 2010, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs