

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JOHN BIBBS**  
Claimant

**APPEAL NO. 20A-UI-08863-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A-1 DISPOSAL SERVICE INC**  
Employer

**OC: 05/10/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

John Bibbs filed a timely appeal from the July 21, 2020, 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 the claimant was discharged on May 8, 2020 for having too many accidents for which he was found to be at fault. After due notice was issued, a hearing was commenced on November 17, 2020 and concluded on November 24, 2020. Mr. Bibbs participated. Mark Happel represented the employer. Exhibits A through O were 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: John Bibbs was employed by A-1 Disposal Service, Inc. as a full-time garbage truck driver from January 2019 until May 15, 2020, when the employer discharged him from the employment. The final incident that triggered the discharge occurred on May 8, 2020. On that day, the employer assigned Mr. Bibbs to operate a garbage truck that had a broken steering mechanism. This was in keeping with the employer's ongoing extensive and dangerous neglect of basic vehicle maintenance. Mr. Bibbs noticed the issue with the steering wheel soon after he departed from the employer's shop, when the vehicle did not turn in response to Mr. Bibbs turning the steering wheel until Mr. Bibbs had turned the wheel three-quarters of a full-rotation. Mr. Bibbs returned the employer's shop and spoke with his supervisor, Shop Foreman Mark Happel. Mr. Happel brushed off the concern. Mr. Bibbs insisted that Mr. Happel operate the vehicle. Mr. Happel operated the vehicle a minimal distance. Mr. Bibbs insisted that Mr. Happel turn the steering wheel. Turning the steering wheel triggered a clicking sound that Mr. Happel dismissed as only an issue with the power steering fluid pump. Mr. Happel directed Mr. Bibbs to use the vehicle. When Mr. Bibbs drove the vehicle down a road that included a curve, the defective steering mechanism prevented Mr. Bibbs from negotiating the curve. As the truck left the roadway, Mr. Bibbs applied the brakes as hard as he could, but the vehicle would not stop.

The vehicle continued over an embankment and into a creek. Mr. Bibbs promptly notified the employer. Mr. Happel reported to the scene with his son. Mr. Happel and his son directed vulgar, verbally abusive comments at Mr. Bibbs. Mr. Happel's son's level of agitation placed Mr. Bibbs in fear for his safety. The employer thereafter ignored Mr. Bibbs' attempts to contact the employer about returning to work. On May 15, 2020, Mr. Bibbs reported to the workplace to get his paycheck and the employer required that he first sign a written reprimand that discharged him from the employment.

On Tuesday, May 5, 2020, Mr. Bibbs has operated the employer's vehicle and failed to negotiate an unanticipated turn in rainy, wet conditions. The garbage truck came to rest on its side on the side of the road. A law enforcement officer responded to the scene, acknowledged that Mr. Bibbs has not been exceeding the speed limit, but nonetheless issued Mr. Bibbs a citation for failure to maintain control of the vehicle.

In December 2019, Mr. Bibbs backed into a snow-covered tree branch while he backed on a narrow street and thereby damaged the side mirror of the garbage truck.

#### **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).

The evidence in the record establishes a discharge for no disqualifying reason. The weight of the evidence establishes that the final accident that triggered the discharge arose from the employer's dangerous neglect of vehicle maintenance and insistence that Mr. Bibbs use a truck with a clearly evident steering defect. Under the circumstances, the accident that occurred was attributable to the employer, outside of Mr. Bibbs' control, and did not constitute misconduct in connection with the employment. Given the extensive evidence of the employer's pervasive, dangerous failure to maintain its vehicles, the weight of the evidence also fails to prove carelessness, negligence or intentional misconduct on the part of Mr. Bibbs in connection with the May 5, 2020 accident. The December 2019 incident was attributable to Mr. Bibbs failure to discern the snow-laden branch while backing. Mr. Bibbs is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The July 21, 2020, reference 01, decision is reversed. The claimant was discharged on May 15, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



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James E. Timberland  
Administrative Law Judge

December 7, 2020  
Decision Dated and Mailed

jet/scn