

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORY J EVANS

Claimant

APPEAL 20A-UI-06799-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DAVENPORT

Employer

OC: 05/03/20

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On June 18, 2020, the claimant filed an appeal from the June 16, 2020, (reference 01) unemployment insurance decision that denied benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on July 28, 2020. Claimant participated. Employer participated through assistant human resource director Christine Murphy.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on October 21, 2018. Claimant last worked as a full-time sewer maintenance worker. Claimant was separated from employment on May 5, 2020, when he resigned.

As a sewer maintenance employee, claimant was required to hold a Commercial Driver's License (CDL). Claimant was aware of this requirement.

In November 2019, claimant was charged with Driving Under the Influence (DUI). This stemmed from an off-duty incident. Claimant has pleaded guilty to the charge and his CDL/driver's license was suspended effective April 7, 2020. At that time, employer notified claimant that he could not work but could remain on as an employee for the next 30 days while he decided whether he wanted to resign or be terminated.

Claimant submitted a resignation effective May 5, 2020, so he could be eligible for rehire.

REASONING AND CONCLUSIONS OF LAW:

In this case, claimant resigned in lieu of termination. Claimant would have been terminated had he not resigned. Therefore, this case will be analyzed as a termination.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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 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.

Employer terminated claimant because he did not have a valid CDL, which was a known requirement for the job. The employer is not obligated to accommodate an employee during a license suspension or revocation period but does have a legal obligation to abide by state and federal transportation safety statutes and regulations and not allow unlicensed individuals to drive. While the license revocation issue was not related to his work, claimant's failure to maintain a valid, unrestricted driver's CDL as a known condition of the employment was misconduct sufficient to warrant a denial of benefits.

Employer is not protesting this claim and pointed this out during the hearing. Claimant also pointed out employer's lack of protest in his appeal letter. The separation from employment actually came to the agency's attention from claimant's report that he resigned from his last employment when he filed his initial application for unemployment insurance benefits. Despite

the lack of protest from employer, the issue of whether the separation from employment disqualifies claimant from receiving benefits must still be decided. Under the applicable law, Iowa Workforce Development decides whether a person is qualified to receive unemployment insurance benefits—not the parties to the claim. Representatives of Iowa Workforce Development have a duty to ascertain relevant information concerning the claim and to determine whether any disqualification should be imposed. Iowa Code § 96.6(2). Eligibility for benefits is determined on the basis of the facts of the case, not whether the employer has filed a protest. *Kehde v. Iowa Dep't of Job Service*, 318 N.W.2d 202, 205-06 (Iowa 1982). Unemployment insurance benefits are paid out of a tax supported fund and the administrative law judge has a statutory duty to render a decision based on the facts uncovered in the course of administering the claim. And those facts, based upon claimant's testimony, require the administrative law judge to disqualify claimant from receiving unemployment insurance benefits.

DECISION:

The June 16, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

August 4, 2020
Decision Dated and Mailed

cal/sam

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.