IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JOSIAH L EDWARDS Claimant **NID INC** Employer	**APPEAL 19A-UI-07402-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 07/28/19** **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, Josiah L. Edwards, filed an appeal from the September 9, 2019, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first telephone hearing was scheduled to be held on October 10, 2019. The hearing was postponed and rescheduled to November 5, 2019 to allow the receipt of exhibits. On November 5, 2019, a telephone hearing was conducted. The claimant participated personally. The employer participated through Jeremy Gouge, president. Employer witnesses included Ken Murphy, Jamie Stromer and Buffy Gardner. Claimant Exhibits 1-3 and Employer Exhibits A-I were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a truck driver and was separated from employment on September 26, 2019. The evidence is disputed as to whether the claimant was discharged or quit the employment.

The claimant worked for this employer for approximately one year and had no discipline between July 23, 2018 and July 23, 2019. The claimant operated an employer owned truck, an "18 wheeler", with a weight of 50,000-80,000 pounds. On July 23, 2019, the claimant notified the employer proactively that he had been issued a warning or speeding ticket for warning, for going 15 miles over the speed limit. In the hours after, the employer received alerts from the claimant's onboard computer software which reflected he was continuing to operate the

employer issued truck in excess of the speed limit, including going 71 miles per hour in a 55 miles per hour zone.

The next day, while the claimant was operating his truck in Kentucky, he was on a narrow road. His tires dropped off the pavement. The claimant overcorrected which caused the vehicle to go airborne and end up in a field off the road. The claimant was injured and the employer's vehicle had an estimated $100,000.00 in damage. The employer's internal investigation concluded the accident was preventable.

The employer rented the claimant a vehicle and brought him to the terminal. The employer presented the claimant with a written warning, which was based not on the accident but the claimant's excessive speed the day before the accident. The employer stated that even if the claimant had not had the accident, it would have issued a warning to him based upon the speeding on July 23, 2019. The claimant was informed that he would be put on probation and his speed of vehicle would be reduced as discipline. The employer had multiple witnesses present during the conversation and stated the claimant became upset about the probationary status. The employer met without the claimant after he refused to sign the warning and decided it would move forward with termination since the claimant was unwilling to accept the reprimand.

At the hearing, the claimant and employer presented differing copies of the warning presented to the claimant. The employer stated after the claimant refused to sign the copy at the meeting, the warning had been taken by the claimant, and so the employer reprinted and resigned a copy of it for his file (Employer Exhibit C). The claimant disputed not signing the warning presented a signed copy for the hearing, which the employer denied having signed at the time of separation. (Claimant Exhibit 1).

The claimant asserted he did not agree with the warning but accepted it and that after the warning had been offered, he was told by management it was being taken back and he would be fired. The claimant opined he was discharged because of the accident totaling the employer's new vehicle.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

> "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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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).

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*.

Administrative agencies are not bound by the technical rules of evidence*. IBP, Inc. v. Al-Gharib,* 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue,* 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp*., 537 N.W.2d 695, 698 (Iowa 1995). In this case, the administrative law judge carefully evaluated the employer's evidence, which included a first-hand conversation with the claimant about the accident, coupled with hearsay evidence such as the on board computer system against the claimant's evidence and memory. The administrative law judge did not find the claimant's position that he was accepting of the warning, signed the warning but that the employer took back the warning, to be credible. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In this case, the credible evidence presented is the claimant acknowledged on July 23, 2019 to operating the employer's truck in excess speed, as confirmed by being pulled over by law enforcement, and through the employer's onboard computer reports. This conduct alone violated state laws, for which the claimant was responsible to obey. The employer reasonably prepared a warning to put the claimant on notice that his conduct was unacceptable and that further violations could lead to discharge.

Within one day of the speeding violations, the claimant was also in a serious accident, causing personal injury and totaling the employer's vehicle. Whether the employer's warning intended to include the claimant's accident or just the speeding, the administrative law judge is persuaded the employer was reasonable in issuing the warning to the claimant. Arguably, the employer could have moved to termination without warning based upon the severity of the speeding or accident, but chose to preserve the claimant's employment by putting him on a probationary status instead. The claimant failed to provide a persuasive reason which would mitigate his non-compliance in accepting the warning. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

DECISION:

The September 9, 2019 (reference 01) initial 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.

_____

Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

_____

Decision Dated and Mailed

jlb/scn