

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREENFIELD, TONY, S
Claimant

APPEAL NO. 13A-UI-06023-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADRIAN TRUCKING INC
Employer

OC: 04/28/13
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Tony Greenfield filed a timely appeal from the May 14, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 27, 2013. At the time of the hearing, Mr. Greenfield was not available at the number he had provided for the hearing. Julie Vannoy represented the employer.

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: Tony Greenfield was employed by Adrian Trucking, Inc., as a full-time over-the-road truck driver from April 2012 until April 19, 2013, when Howard Adrian, Owner, discharged him from the employment. On April 19, 2013, Mr. Greenfield attempted to travel under a 12'6" bridge overpass with the trailer that measured 13'6" high. The overpass was clearly labeled. The trailer belonged to Wal-Mart. The employer contracts with Wal-Mart to haul Wal-Mart's trailers and Mr. Greenfield was well aware of how high Wal-Mart's trailers were, 13'6". Mr. Greenfield collided with the bridge overpass and cause substantial damage to Wal-Mart's trailer, which was deemed totaled. Wal-Mart insisted that Mr. Greenfield no longer hold its trailers.

The final incident followed three other incidents that factored into the employer's decision to end the employment. Mr. Greenfield was cited for and convicted of speeding in the employer's truck. The incident occurred in July 2012. Mr. Greenfield was cited for and convicted of illegal lane use in the employer's truck. Mr. Greenfield hit a van and caused damage to the van. The incident occurred in November 2012. In February 2013, Mr. Greenfield was cited for logbook violations and operating a commercial motor vehicle with an expired medical certificate. Mr. Greenfield was responsible for making certain that his logbook was accurate and up-to-date. Mr. Greenfield was responsible for making certain that his medical certification was valid.

REASONING AND CONCLUSIONS OF LAW:

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 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) alone. 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 evidence in the record is sufficient to establish a pattern of conduct on the part of Mr. Greenfield that indicated a willful and wanton disregard of the employer's interests. In connection with the final incident that triggered the discharge, Mr. Greenfield failed to notice and failed to heed the sign indicating the bridge overpass clearance, collided with the bridge overpass, totaled Wal-Mart's trailer, and prompted Wal-Mart to insist that he no longer hold their trailers. The incident, at minimum, involved negligence on the part of Mr. Greenfield. The next most recent incident, in February 2013, was another incident of negligence, wherein Mr. Greenfield failed to keep an accurate and up-to-date logbook and failed to ensure he had a valid, up-to-date medical certificate. The two earlier incidents were violations of the rules of the road. One was for violating the posted speed limit. The other was for causing an accident through illegal lane use.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Greenfield was discharged for misconduct. Accordingly, Mr. Greenfield is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Greenfield.

DECISION:

The Agency representative's May 14, 2013, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css