

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRADLEY B ZAHNER
Claimant

APPEAL NO: 17A-UI-11386-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSS-DILLON TIRE INC
Employer

OC: 10/08/17
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 1, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 28, 2017. The claimant participated in the hearing with friend/roommate Turon Johnson. Jerry Newton, Off the Road Manager and Nate Shaw, Human Resources/Payroll Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Ten were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time tire technician for Cross-Dillon Tire from December 15, 2016 to October 12, 2017. He was discharged for attendance issues, failing to report a work-related injury; failing an alcohol screening test; and insubordination for failing to sign the warnings.

The claimant was scheduled to work at 7:30 a.m. October 5, 2017. He failed to call the employer to report his absence by 7:55 a.m. and Off the Road Manager Jerry Newton called him. The claimant stated he overslept and would be in shortly but had not arrived by 8:30 a.m. so Mr. Newton tried to call him throughout the morning, finally reaching him at 12:43 p.m. The claimant stated he took two Tylenol PM and fell back asleep. He also said he injured himself at work October 4, 2017. Mr. Newton contacted Human Resources/Payroll Administrator Nate Shaw and was instructed to send the claimant to Concentra to be examined and submit to an alcohol and drug screen. The claimant reported to Concentra at 2:30 p.m. and tested positive for alcohol. He tested at .137 then .156 and finally at .236. He was also diagnosed with a hernia. The employer sent the claimant home October 6, 2017, and told him to return Monday, October 9, 2017, so it could make a decision of how to respond to the failure to report the work injury and the positive alcohol test.

The claimant was scheduled to work light duty at 8:00 a.m. October 9, 2017, but called at 7:55 a.m. and stated he just woke up and would be in soon. He called back at 9:42 a.m. and

said he was going to stay home. The employer told him he needed to provide a doctor's excuse as he had been released to return to work with restrictions and the claimant replied he was "just going to stay home." He did not provide a doctor's note.

On October 10, 2017, the claimant reported for work and the employer had four written warnings for the claimant to sign in acknowledgment of receipt (Employer's Exhibits One, Four, Seven and Nine). The first warning was for failing to report his injury when it happened and waiting until he talked to the employer the second time October 5, 2017, before reporting it (Employer's Exhibit One). The second warning was for attendance because the claimant failed to call or show up for work October 5, 2017, until after the employer called him (Employer's Exhibit Four). He stated he would be in but overslept and did not report for work (Employer's Exhibit Four). The third warning was for calling at 7:55 a.m. for his 8:00 a.m. shift October 9, 2017, to say he overslept but would be in soon before calling back at 9:42 a.m. and saying he fell back asleep and was staying home (Employer's Exhibit Seven). The fourth warning was issued for failing the alcohol test October 5, 2017 (Employer's Exhibit Nine). The claimant refused to sign any of the warnings and consequently the employer gave the claimant a fifth warning for insubordination (Employer's Exhibit Ten). The employer told the claimant if he did not sign the warnings stating he read the warnings and understood them his employment would be terminated and the claimant chose not to sign the warnings.

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 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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980). The employer's warnings allow for employees to make a statement, with a section saying, "I disagree with Employer's description of violation for these reasons:" but the claimant only commented on one warning and failed to sign that one as well. The claimant had some legitimate concerns about the warning for failing to report his injury in a timely manner and the positive alcohol test and he could have expressed those issues on the warnings and then signed them but instead he chose not to do so even after the employer notified him that failing to sign would result in termination.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

DECISION:

The November 1, 2017, reference 01, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn