

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM C SPIKES
Claimant

AMERIGAS PROPANE INC
Employer

APPEAL 21A-UI-15905-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On July 18, 2021, claimant William C. Spikes filed an appeal from the July 12, 2021 (reference 03) unemployment insurance decision that found claimant was discharged from employment for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held at 10:00 a.m. on Friday, September 10, 2021. Appeal numbers 21A-UI-15904-LJ-T and 21A-UI-15905-LJ-T were heard together and created one record. The claimant, William C. Spikes, participated. The employer, Amerigas Propane, Inc., participated through Roger Bergfeld, Area Manager. No exhibits were offered or admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was employed full time, most recently as a service tech, from March 23, 2020, until April 22, 2021, when he was discharged for violating the employer's safety policies prohibiting distracted driving.

The final incident leading to claimant's discharge occurred on April 21, 2021. That day, claimant was talking on a cell phone while operating one of the employer's delivery trucks. The employer discovered this incident when reviewing drive cam video. Claimant admits he was doing this. He was talking with his scheduler and dispatcher, Rachel.

Claimant had previously violated the employer's distracted driving policy on two occasions in 2021. On January 7, 2021, claimant was wearing ear buds while operating one of the employer's delivery trucks. Bergfeld and his supervisor spoke with claimant about this incident on January 9, 2021. On January 28, 2021, claimant was using his cell phone while operating one of the employer's delivery trucks. The following day, claimant was issued a written warning which informed him that future incidents would place his job in jeopardy. Claimant did not sign

this written warning because he disagreed with it, as he did not believe the employer had followed proper progressive discipline.

Claimant received a copy of the employer's distracted driving and safety policies when he was hired, and he agreed not to engage in distracted driving while operating the employer's vehicles. At some point during claimant's employment, the employer purchased in-vehicle cameras that were different from the cameras used at the time, and the employer installed these new cameras in some vehicles, but left the old cameras in others. Claimant believes that installation of these new cameras voided his distracted driving agreement.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code § 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.

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).

Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

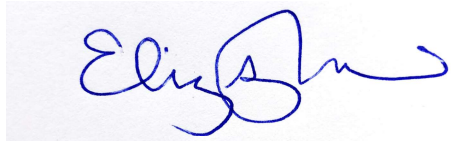
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer’s testimony more credible than claimant’s testimony. Specifically, the administrative law judge does not believe that claimant did not know that talking on the telephone while operating his work vehicle on April 21 would place his job in jeopardy. While claimant disagreed with it, he knew that he had previously received a final warning for this exact issue: distracted driving. Just because he did not sign the warning does not make the warning go away.

The employer has established through credible testimony that claimant engaged in misconduct when he violated the distracted driving policy on April 21, 2021. Claimant had been warned for violating this policy in the past on several occasions, and he was told that his job would be in jeopardy for a future violation. The employer has established that claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The July 12, 2021 (reference 03) unemployment insurance decision is affirmed. 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.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

September 16, 2021
Decision Dated and Mailed

lj/kmj