

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L MORTON
Claimant

APPEAL NO. 11A-UI-05364-N

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHUEMAN TRANSFER INC
Employer

OC: 03/27/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Robert L. Morton filed a timely appeal from a representative's decision dated April 19, 2011, reference 01, which denied unemployment insurance benefits. After due notice was issued, a hearing was held in Council Bluffs, Iowa, on May 26, 2011. Mr. Morton appeared personally. Appearing as a witness was Ms. Jean Walker. The employer participated by Mr. L.J. Horbach, controller.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Robert Morton was employed by Schueman Transfer, Inc. from November 1, 2010, until March 25, 2011, when he was discharged from employment. Mr. Horton worked as a full-time over-the-road tractor trailer driver and was paid by the mile. His immediate supervisor was the dispatcher, Bruce Bardwell.

Mr. Morton was discharged when the employer made a management decision to terminate the claimant to minimize any increases in the company's insurance rates. At the time that Mr. Morton was hired, the company was aware of previous infractions on Mr. Morton's driving record and accepted them. The company was aware that it was going to change insurance carriers in the future and decided that if the rates increased with the new carrier with Mr. Morton as an employee, Mr. Morton would no longer be retained by the company.

During the time that Mr. Morton was employed by Schueman Transfer, he did not receive any traffic citations that were reported on his motor vehicle record. Mr. Morton was involved in one incident in Chicago, Illinois, where the top of the trailer that he was hauling was damaged while Mr. Morton attempted to negotiate under an underpass. The claimant was following the route directives given to him by the company at that time and was not able to anticipate that the top of the trailer would scrape based upon the reported height of the underpass. On another occasions, Mr. Morton was involved in a "merging" incident where a passenger car driver attempted to squeeze by the truck that Mr. Morton was driving, causing superficial damage to the automobile. Mr. Morton was in his designated interstate entrance lane and did not cause the accident, nor was Mr. Morton able to

prevent. The third incident considered by the employer in its decision to terminate Mr. Morton took place when the company received a notice from the Wyoming Highway Patrol that there had been a report that Mr. Morton was operating the company truck in a dangerous manner based upon driving conditions. Mr. Morton was not given a citation by the Wyoming Highway Patrol at the time. During the incident, Mr. Morton was unexpectedly forced to change lanes due to a jackknifed automobile and trailer that was unobservable by Mr. Morton until the last moment. When changing lanes to avoid a direct impact with the jackknifed vehicle, Mr. Morton inadvertently caused another tractor trailer operator to be required to move over to avoid an impact with the truck that Mr. Morton was operating. Because the other driver had made a telephone complaint, a report of the incident was forwarded to Schueman Transfer, Inc.

Although Mr. Morton remained insurable with the company's new insurance carrier, the company made a management decision to terminate Mr. Morton from his employment, as they did not wish to pay any increased rates.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Mr. Morton engaged in intentional misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 establishing disqualifying job misconduct. See 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 the claimant but whether the claimant is entitled to unemployment insurance benefits. See Infante v. Iowa Department of Job Service, 364 N.W.2d 262 (Iowa App. 1984). When based upon carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. See Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). An employer may discharge an employee for any number of reasons or for 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, the employer incurs potential liability for unemployment insurance benefits related to that separation. 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 App. 1992).

Inasmuch as the evidence in the record establishes that Mr. Morton was discharged based upon a company management decision to terminate him rather than pay higher insurance rates, the administrative law judge finds the evidence in the record is not sufficient to warrant the denial of unemployment insurance benefits.

Mr. Morton appeared personally and testified under oath, offering firsthand testimony denying intentionally acting in a manner contrary to the employer’s interests or their standards of behavior. The claimant testified about and explained each driving incident cited by the employer and provided reasonable explanations for his conduct. The administrative law judge notes that Mr. Morton was not cited for improper driving in any of the instances. In contrast, some of the evidence in support of the employer is primarily hearsay in nature. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony.

While the decision to terminate Mr. Morton may have been a sound decision from a management viewpoint, intentional disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits has not been established. Benefits are allowed, provided Mr. Morton is otherwise eligible.

DECISION:

The representative’s decision dated April 19, 2011, reference 01, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw