

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JIM BEHRENS
Claimant

OMAHA TRUCK CENTER INC
Employer

APPEAL 20A-UI-06567-J1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: APPELLANT (2)**

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

STATEMENT OF THE CASE:

On June 18, 2020, the claimant filed an appeal from the June 11, 2020, (reference 01) unemployment insurance decision that denied benefits based on violation of a company rule. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2020. Claimant participated. Employer participated through Tiffany Mytty-Klein, Director of Human Recourses.

ISSUES:

Did claimant commit job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 24, 2000. Claimant last worked as a full-time Truck Sales Specialist. Claimant was separated from employment on February 10, 2020, when the employer learned claimant had been charged with a second offense driving while intoxicated (DWI 2nd).

Ms. Mytty-Klein stated that the employer provided insurance for employees when driving company or customer's trucks. The employer's policy is that employees' that drive trucks have a commercial driver's license (CDL) or obtain a CDL shortly after being hired. The claimant was aware of this policy. The claimant worked for his employer for about 20-years. Claimant received a handbook 20-years ago when he was hired and did not know the specifics of the policy.

The employer was informed on February 4, 2020 that claimant had been charged with DWI 2nd and was ticketed for speeding. Claimant was in his personal vehicle and not performing work for the employer. Claimant had requested February 5, 2020 off work before he was arrested on February 4, 2020. Claimant did not have any unexcused time off work due to his arrest.

Ms. Mytty-Klein testified that with a DWI 2nd, claimant was no longer insurable and given his past employment history of a conviction for DWI 1st in January 2018 and a dismissed DWI 2nd charge

in April 2018, the employer was not giving claimant any more chances. Claimant was fired on February 10, 2020.

Claimant plead guilty to speeding, 68 mph in a 55 mph zone, which did not affect his CDL license. Claimant has plead not guilty to the February 4, 2020 DWI 2nd and will be going to trial in September 2020. Claimant testified that he is currently able to have a CDL. There was no testimony to the contrary. Claimant was told that since he was charged with a DWI 2nd he was no longer insurable and was discharged.

REASONING AND CONCLUSIONS OF LAW:

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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In this case claimant was fired due to a charge of DWI 2nd. Claimant has not been convicted. Claimant is eligible to drive with a CDL. Claimant was allowed to work in 2018 with a pending DWI 2nd charge. That charge was dismissed and claimant continued to work. The February 4, 2020 speeding charge that claimant plead to and the DWI 2nd charge was in his personal vehicle. The employer has made a business decision that they do not want to give claimant another chance. That is the employer's right. However, the employer has not proven misconduct.

Employer has not met its burden of proving disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.5(11)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

11. *Incarceration –disqualified.*

a. If the department finds that the individual became separated from employment due to the individual's incarceration in a jail, municipal holding facility, or correctional institution or facility, unless the department finds all of the following:

(1) The individual notified the employer that the individual would be absent from work due to the individual's incarceration prior to any such absence.

(2) Criminal charges relating to the incarceration were not filed against the individual, all criminal charges against the individual relating to the incarceration were dismissed, or the individual was found not guilty of all criminal charges relating to the incarceration.

(3) The individual reported back to the employer within two work days of the individual's release from incarceration and offered services.

(4) The employer rejected the individual's offer of services.


b. A disqualification under this subsection 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.

Claimant did not have any unexcused absence from work due to his arrest. Claimant had permission to be off on February 5, 2020, the only day he was unavailable. Claimant is not disqualified due to incarceration.

DECISION:

Regular Unemployment Insurance Benefits Under State Law

The June 11, 2020, (reference 01) unemployment insurance decision is reversed. Benefits are awarded, provided he is otherwise eligible.



James F. Elliott
Administrative Law Judge

July 29, 2020
Decision Dated and Mailed

je/scn