

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEREK W KNIGHT
Claimant

RUAN TRANSPORT CORP
Employer

APPEAL 16A-UI-07834-NM-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/26/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 5, 2016. The claimant Derek Knight participated and testified. The employer Ruan Transport Group did not participate.

ISSUE:

Was the claimant discharged 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 as an IT specialist from April 1, 2015, until this employment ended on June 29, 2016, when he was discharged.

On June 17, 2016, claimant was on-call. When claimant went to bed for the evening he checked his cell phone to make sure it was on, the volume was turned up, and he had service. Claimant did not notice any issues. Claimant did not receive any calls until 7:00 a.m. the following day. Claimant was able to answer that call and address the issue presented in a timely manner. When claimant hung up another call from several hours earlier came through for the first time. It appeared claimant's cell service had been temporarily interrupted, possibly due to a severe overnight thunderstorm. Claimant immediately returned the missed call and notified his supervisor of what had happened.

The following Monday, June 20, claimant met with his supervisor to discuss the issue. Claimant's supervisor told him she understood what had happened and issued him corrective action in the form of a written warning. Claimant had been issued a verbal warning once before for failing to answer a call in a timely manner. Claimant was not advised that further violations would result in termination. Following the June 20 meeting, claimant believed the issue was

resolved and had no reason to think his job was in jeopardy. The next week, on June 29, claimant was notified that his supervisor's supervisor had made the decision to end his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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 conduct for which claimant was discharged was merely an isolated incident resulting for circumstances beyond his control. Claimant was unable to answer a service call due to an interruption in cell service, which he was unaware of until several hours later. No evidence was submitted to indicate that the call was missed due to any deliberate act or omission by the claimant. Similarly, no evidence was introduced to claimant acted negligently or in violation of any policy or procedure. The employer has failed to identify any misconduct the claimant engaged in. As the employer has not met its burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning, benefits are allowed.

Furthermore, inasmuch as the employer warned claimant and issued corrective action regarding the final incident on June 20, 2016, and there were no incidents of alleged misconduct thereafter, it has not met the burden of proof to establish that claimant acted deliberately or negligently after the most recent warning. The employer has not established a current or final act of misconduct, and, without such, the history of other incidents need not be examined. Accordingly, benefits are allowed.

DECISION:

The July 15, 2016, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/