

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD L CROSSER
Claimant

CONTRACT TRANSPORT INC
Employer

APPEAL 17A-UI-04914-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/09/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2017. The claimant was initially available at the number provided, but was disconnected prior to any testimony being given. Claimant did not respond to an attempt to reconnect with him and therefore did not participate. The employer participated through Treasurer Jeane Nible and Human Resource Director Allen Bergman. Employer's Exhibits 1 through 3 were received into evidence.

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 a driver from April 1, 2016, until this employment ended on February 14, 2017, when he was discharged.

On February 14, 2017, while claimant was driving the employer's truck, an Iowa Department of Transportation (DOT) officer observed him to be driving in a manner that was not safe. The DOT officer pulled claimant over and searched the truck. The officer found drugs and drug paraphernalia. Claimant was arrested and taken to jail. The employer was notified so they could pick up the abandoned truck. This conduct violates the employer's policies, DOT regulations, and state and federal law. (Exhibits 1 and 3). The consequence for such violations is immediate termination. Claimant was notified via letter that his employment was terminated effective immediately. (Exhibits 2 and 3).

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:

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public, by ensuring employees follow safety laws while operating a company vehicle. Claimant's conduct not only violated the employer's policies, but is also prohibited by DOT regulations, state law and federal law. Having drugs and drug related paraphernalia on the employer's property, especially when that property is a large vehicle, shows a deliberate disregard for the employer's interests. Such conduct is disqualifying, even without prior warning. Benefits are denied.

DECISION:

The May 5, 2017, (reference 01) unemployment insurance 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs