

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN D RHONE
Claimant

ROADSAFE TRAFFIC SYSTEMS INC
Employer

APPEAL 15A-UI-14128-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/21/14
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 17, 2015, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2016. Claimant participated. Employer 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 a traffic controller from August 2013, and was separated from employment on November 15, 2015, when he was discharged.

Claimant was told by the employer he had to take a drug test at some point from November 10, 2015 through November 23, 2015. On November 13, 2015, claimant was requested to go to the office. Claimant went to the office around 1:00 p.m. and he picked up the drug test from his friend. Later on November 13, 2015, claimant was texted by the employer at 2:17 p.m. and told he had to take the drug test in the next 30 minutes. This was not during claimant's regular work hours. Claimant worked third shift for the employer, from 7:00 p.m. until 7:00 a.m. Claimant was unable to take his test on November 13, 2015. Claimant texted the employer he could not take the test. Claimant did not hear back from the employer. On November 15, 2015, claimant asked the employer if he was to come into work or take the test and the employer told him the test was supposed to be taken on November 13, 2015. Claimant then went and spoke to his boss on November 16, 2015, and explained what was going on. Claimant asked if he was discharged. The employer told claimant it would get back to him on whether he still had a job. The employer said they were not going to let claimant work until it got back to him. Claimant took drug test on November 20, 2015. Claimant has never heard back on the results of his drug test. The employer has someone else doing claimant's job. Claimant never told the employer he quit. The employer would not let claimant work after November 13, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). 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). 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). 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).

Claimant was effectively discharged on November 15, 2015 when the employer refused to let him continue to work. Prior to November 15, 2015, claimant was told he had from November 10, 2015 through November 23, 2015 to take a drug test for the employer. On November 13, 2015, at 2:17 p.m., the employer texted claimant that he had 30 minutes to take the drug test. Claimant's shift ended at 7:00 a.m. that morning. "Drug or alcohol testing of employees conducted by an employer shall normally occur during, or immediately before or after, a regular work period." I.C.A. 730.5(6)(a). Claimant was unable to take the drug test within those 30 minutes on November 13, 2015. Claimant was then not allowed to work his next scheduled shift on November 15, 2015, or any shifts after that. Claimant did take the drug test on November 20, 2015, but the employer never provided him the results. Claimant never told the employer he quit. The employer has someone else doing claimant's job and has not let claimant work after he did not take the test on November 13, 2015.

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

DECISION:

The December 17, 2015, (reference 03) 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/css