

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LAUREL R SEVERT
Claimant

APPEAL NO. 18A-UI-07062-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURRAN TRANSFER INC
Employer

OC: 06/03/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Laurel Severt filed a timely appeal from the June 20, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Severt was discharged on May 22, 2018 for wanton carelessness in performing her work. After due notice was issued, a hearing was held on July 19, 2018. Ms. Severt participated. Keith Fuller represented the employer and presented additional testimony through Sandra Sander. Exhibits A and B were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laurel Severt was employed by Curran Transfer, d/b/a Straight Shot Express, as a full-time commercial truck driver from March 12, 2018 until May 22, 2018, when Keith Fuller, Operations Safety Director, discharged her from the employment for having two preventable accidents while operating the employer's straight truck. The final incident that triggered the discharge occurred on May 17, 2018, when the truck Ms. Severt was operating collided with the underside of a bridge. The bridge height was 11 ft. 6 in. The truck height was 13 ft. 6 in. Ms. Severt disregarded the visibly low height of the bridge and a warning sign. Ms. Severt attempted to travel under the bridge at considerably speed without first ensuring that the truck would fit. The collision peeled back and peeled off the entire top of the trailer on the employer's straight truck. On April 5, 2018, Ms. Severt was operating the employer's straight truck on a customer's farm property when the truck hit and damaged a piece of farm equipment. Ms. Severt had not noted the piece of farm equipment. Ms. Severt did not report the incident to the employer. Instead, the customer reported the incident to the employer and the employer then addressed the matter with Ms. Severt. On April 6, 2018, the employer issued a written reprimand to Ms. Severt based on the April 5, 2018 incident. The reprimand warned that further infractions could lead to suspension or discharge from the employment.

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).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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 Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the record establishes that Ms. Severt operated the employer's truck with gross negligence and wanton carelessness on May 17, 2018 and with carelessness on April 5, 2018. Ms. Severt elected to disregard the obvious low height of the bridge. See Exhibit B. Ms. Severt disregarded the adjacent warning sign. See Exhibit B. Ms. Severt elected to take no steps whatever to see whether she could safely pass under the bridge. Ms. Severt elected to take the route under the bridge full speed, which ensured the damage to the employer's truck would be substantial. The final incident by itself was sufficient to establish misconduct in connection with the employment based on a willful and wanton disregard of the employer's interests. The prior careless operation of the employer's truck included a failure to report the incident to the employer. Both aspects of the prior incident demonstrated a disregard of the employer's interests. Ms. Severt is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. Ms. Severt must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

DECISION:

The June 20, 2018, reference 01, decision is affirmed. The claimant was discharged on May 22, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs