

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON S KICE
Claimant

O C TRUCKING INC
Employer

APPEAL 19A-UI-02157-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the March 6, 2019, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged and the employer did not establish willful or deliberate misconduct. The parties were properly notified of the hearing. A telephonic hearing was held on March 27, 2019. The claimant, Brandon S. Kice, participated. The employer, O. C. Trucking, Inc., participated through Orvil Hetzler, President; Elizabeth Hetzler, Vice President; and Jen Davis, Office Manager; . Employer's Exhibits 1 through 5 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as a truck driver, from April 4, 2018, until February 13, 2019, when he was discharged for violating Cargill's safety standards. On or about January 19, 2019, claimant drove his work truck and ran loads for the employer for over 24 hours straight. Claimant ran loads from Cedar Rapids to Fort Dodge four times. Claimant acknowledges that he did this. The employer learned about this incident on February 13, 2019, when someone from Cargill (the employer's only customer) called and brought it to Orvil Hetzler's attention. Cargill told Hetzler that claimant could no longer come onto its property and stated, "Get rid of him (claimant) or we'll get rid of you." Therefore, Hetzler immediately discharged claimant.

The employer maintains safety rules, but it is unclear what those rules say about driving. It is also unclear whether claimant is allowed to drive more than 14 hours per day under MAP-21, as

he is hauling agricultural products when working for the employer. Regardless of these rules, Hetzler testified that but for Cargill giving him an ultimatum, he would not have discharged Kice.

Claimant also had issues adhering to his designated load times. Elizabeth Hetzler explained that Cargill sets the load times for drivers to drop their loads at its facility. The drivers have a thirty-minute window in which to bring their loads, extending from fifteen minutes before the designated load time to fifteen minutes after the designated load time. Claimant failed to drop his loads at the designated load times on January 18 and 19. (Exhibit 2 through 4) Claimant was told by Davis that he could drop his load outside the designated load time, due to the snowstorm that occurred on January 18.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2,460.00, since filing a claim with an effective date of February 17, 2019, for the five weeks ending March 23, 2019. The administrative record also establishes that the employer did participate in the fact-finding interview or make a first-hand witness available for rebuttal. Jen Davis and Elizabeth Hetzler personally participated in the fact-finding interview.

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, provided he is otherwise eligible.

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.

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. In this case, Orvil Hetzler testified that the sole reason claimant was discharged was that Cargill would no longer allow claimant onto its property. There is no indication claimant received a copy of Cargill's safety policies or was instructed he had to follow Cargill's expectations. It remains unclear whether claimant's actions on or about January 19 violated the law or the employer's own safety rules. The employer has not met its burden of establishing that claimant was discharged from employment for any disqualifying reason. Benefits are allowed. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The March 6, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn