

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VERLA S WEIMERSKIRCH
Claimant

CURRAN TRANSFER INC
Employer

APPEAL 15A-UI-03056-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/15/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 5, 2015 (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation. The parties were properly notified about the hearing. A telephone hearing was held on April 8, 2015. The claimant participated. Although properly notified, the 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: The claimant was employed part time as a delivery driver and was separated from employment on February 15, 2015 when she was discharged.

The final incident occurred on January 20, 2015, when the claimant received a speeding ticket in Rhode Island for going 65 miles in a 55 mile zone, while making a delivery for the employer. She reported the ticket to the employer, who paid the ticket, and then deducted the amount from her paycheck. The claimant remained employed until February 15, 2015 when Mary Curran told her she was being fired for tickets. The claimant did not have the opportunity to discuss the circumstances of her separation or why she was permitted to continue working for a month after the ticket.

Prior to the claimant's separation, she had two other tickets in 2009 and 2013. She was issued a verbal warning but otherwise had no written warnings or awareness that her job was in jeopardy as a result of her driving record.

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 § 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, (4), and (8) provide:

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).

(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.

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

Employee misconduct must be a current act in order to deny unemployment benefits. *Myers v. Iowa Dep't of Job Serv.*, 373 N.W.2d 507 (Iowa Ct. App. 1985). This incident must occur within a reasonable period from the discharge date. The issue is when the employer learned of the current act and did it act to terminate the individual within a reasonable period of time. An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011). A lapse of 25 days from the final act until discharge when the claimant notified the employer of the ticket immediately did not make the final act a "past act." The employer cannot on one hand argue that the conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for almost a month before determining she should be discharged.

Although the claimant did engage in a final act of misconduct by committing the speeding infractions, inasmuch as employer knew of the incident right away, and did not advise the claimant it was an issue that would be investigated and delayed discharging for over three weeks, the act for which the claimant was discharged was no longer current. Because the act for which the claimant was discharged was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

DECISION:

The March 5, 2015 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/can