IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS

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

JEFFREY BUSH

Claimant

APPEAL NO: 09A-UI-03448-BT

ADMINISTRATIVE LAW JUDGE

DECISION

FLORILLI TRANSPORTATION LLC

Employer

OC: 01/25/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Jeffrey Bush (claimant) appealed an unemployment insurance decision dated February 23, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Florilli Transportation, LLC (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 30, 2009. The claimant participated in the hearing. The employer participated through Brad Jones, President. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time over-the-road truck driver from October 31, 2006 through December 13, 2008 when he was discharged for late deliveries. The employer discussed the problem with the claimant several times and the claimant had as many as 11 or 12 late deliveries. He was given a final warning on October 28, 2008. On that date, the claimant was not ready to go to work like he said he would be and he would not answer the telephone. The employer finally called the claimant's emergency contact, his father, who lives The claimant's father reached the claimant and the claimant finally called the employer. He was upset the employer had contacted his father but did not offer an explanation as to why he was not available and ready for work. He was advised that he would be discharged upon the next late delivery. The claimant picked up a load in Kansas on November 29, 2008 at 9:42 a.m. which was to be delivered in New York on December 2, 2008 at 6:00 p.m. He did not even leave Kansas until December 2, 2008 and the load had to be delayed by 24 hours. The claimant initially said there was bad traffic due to a football game but then claimed it was because of bad weather. The claimant had plenty of time to get the load delivered by the deadline but opted not to do so. It took a while to get the claimant and his truck back to Davenport, Iowa but he was discharged when he returned on December 13, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

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.

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.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The claimant was discharged for repeated late deliveries. He had been counseled previously but was placed on a final warning on October 28, 2008. He was late delivering a load to New York which he picked up on November 29, 2008, even though he had sufficient time in which to deliver it. The claimant's late deliveries show a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer.

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge or disciplinary suspension for misconduct cannot be based on such past act(s). The termination or disciplinary suspension 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 <u>Greene v. EAB</u>, 426 N.W.2d 659, 662 (Iowa App. 1988). The claimant was late on his delivery on December 3, 2008 but was not discharged until December 13, 2008. The delay in discharge was how long it took for the employer to bring the claimant and his truck back to Davenport, Iowa. Consequently, his discharge is based on a current act. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated February 23, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman Administrative Law Judge

Decision Dated and Mailed

sda/pjs