

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRANDON M CURRY
Claimant

APPEAL NO: 20A-UI-06544-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANNETT HOLDINGS INC
Employer

OC: 03/29/20
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 12, 2020, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 24, 2020. The claimant participated in the hearing. Jeremy Small, Operations Manager and Jeff Knafle, Fleet Manager, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time truck driver for Annett Holdings from May 31, 2013 to March 31, 2020. He was discharged following a customer complaint.

On September 30, 2016, during a performance appraisal, the employer spoke to the claimant about professionalism at customers' sites. The claimant hit the side of the framing of the employer's overhead door in Lincoln, Nebraska. The employer told the claimant he was the face of the company on the road and there would be no "next time" for professionalism.

On January 20, 2020, a customer complained that the claimant was blowing his air horn excessively and needlessly to the point the customer's neighbor lodged a complaint. The employer spoke to the claimant in person and the claimant apologized for his actions and stated he understood when and where he could blow his horn.

On March 27, 2020, the employer received a complaint about the claimant. The claimant's trailer was live loaded at Georgia Pacific and a tarp was placed over it and then the claimant was responsible for securing the load. The claimant walked around the trailer to secure the load and then got on the trailer to place edge protectors on the product. A Georgia Pacific supervisor told him they had a rule against being on a trailer. The claimant finished the last two edge protectors and got off the trailer having fully secured the load.

The employer routed the claimant into the Des Moines terminal and notified him it was terminating his employment March 31, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The employer cited three incidents of unprofessionalism on the part of the claimant in nearly seven years of employment with the company. In 2016 he hit the siding of a customer's overhead door; in January 2020, he blew his horn excessively at a customer's location and on March 27, 2020, he got on top of his trailer to secure the load he was carrying.

The 2016 incident, while unfortunate, was an accident, the only one the claimant had, and was too far removed in time from the claimant's separation to merit consideration. That leaves the January 10 and March 27, 2020, situations. While the claimant used his horn several times January 10, 2020, his explanation that it was for safety reasons was reasonable. Finally, the claimant was on top of the trailer to secure the load and was unaware that Georgia Pacific had a rule prohibiting that conduct.

Under these circumstances, the administrative law judge must conclude the employer has not met its burden of proving intentional, disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The June 12, 2020, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



Julie Elder
Administrative Law Judge

July 31, 2020
Decision Dated and Mailed

je/scn