

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM C HAMMER
Claimant

FAREWAY STORES INC
Employer

APPEAL 18A-UI-08223-NM

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/08/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 26, 2018, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for having too many accidents. The parties were properly notified about the hearing. An in-person hearing was held on August 29, 2018 in Des Moines, Iowa. Claimant participated and testified. Also present on behalf of the claimant, but not testifying, was his spouse, Kay Hammer. Employer participated through in-house counsel, Ryan Leemkuil, and director of fleet operations, Mark Wyrick. Employer's Exhibits 1 through 3 and claimant's Exhibit A were received into evidence.

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: Claimant began working for employer on November 21, 2014. Claimant last worked as a full-time truck driver. Claimant was separated from employment on July 12, 2018, when he was discharged.

On July 5, 2018, claimant was transporting a load on Interstate 35 when he was involved in an accident. (Exhibit 3). There was another tractor-trailer on the left shoulder that was stalled with a flat tire. The stalled vehicle was pulled to the side, but still partially blocking the left lane of the interstate. Claimant was travelling at 67 miles per hour in the left lane. (Exhibit 2). The posted speed limit was 70 miles per hour. As claimant approached the stalled vehicle, he was attempting to merge into the right lane, but another vehicle, a van, was in his way. Claimant continued to check the right lane over his shoulder to see if the van had moved so he could merge. He looked away from the road in front of him to check the right lane, claimant did not notice that the stalled vehicle was partially obstructing the left lane, until just before he approached the vehicle. Claimant panicked and attempted to break, but hit the back right side of the stalled vehicle. Law enforcement arrived on the scene and claimant was cited under the State of Iowa's new "pull-over" law. Claimant was not issued any additional citations. There was no evidence that claimant was using his cell phone or otherwise engaged in distracted

driving. Wyrick had spoken to claimant twice before about traveling at excessive speeds, but claimant had no prior history of accidents and was never advised his job was in jeopardy.

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 section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The conduct for which claimant was discharged was merely an isolated incident of poor judgment. To the extent that this was claimant's only accident, the employer cannot establish a pattern of misbehavior, the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016).

Claimant certainly should have been more careful in balancing his need to observe the road in front of him while trying to safely merge, so that he could better have judged the position of the stalled vehicle, avoiding the accident. There is no evidence that claimant was speeding, engaged in distracted driving, or engaged in any other behavior that would indicate he was deliberately disregarding the interest of the employer. Ordinary negligence is all that is proven here. As such, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The July 26, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs