

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

Claimant

**APPEAL NO. 19A-UI-04661-JC-T**

Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/12/19  
Claimant: Appellant (1)**

49 CFR 40.321 – Sealed Record Confidential Information  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 3, 2019 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 7, 2019. Claimant participated. Employer participated and was represented by an attorney. Employer Exhibits 1-7 were admitted over objection. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue in this matter is whether claimant was discharged for reasons related to job misconduct sufficient to warrant a denial of benefits, and if the hearing record and decision shall be publicly disclosed.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time feed transportation driver beginning in 2017 and was separated from employment on May 16, 2019 when he was discharged based upon unsafe operation of the employer's vehicle.

When the claimant was hired, he was trained on the employer's rules and policies. The claimant was required to possess a Class A Commercial Driver's License, and comply with Department of Transportation (DOT) regulations. The claimant was assigned a fifty-three foot truck, and the claimant generally operated the same truck to perform his work. Part of his job duties included a pre-trip inspection and reporting any possible mechanical or safety issues for the employer to address.

The undisputed evidence is the claimant was in a single vehicle accident in the employer issued truck on May 13, 2019 (Employer Exhibit 3). The claimant was driving when he took a turn, that he stated he done many times before (claimant testimony). The claimant took the turn with a speed and lack of control which resulted in the vehicle skidding approximately 12-15 feet, with

visible skid marks on the road, before the truck overturned (Employer Exhibit 5). The claimant was not injured, but there was significant damage to the vehicle. Law enforcement cited the claimant with a failure to maintain control (Employer Exhibit 4). At the time of the hearing, the citation had not been resolved.

The claimant had no explanation for what occurred or why the truck overturned. There was no indication that the claimant's vehicle had faulty parts or a mechanical issue which contributed to the accident occurring. No evidence was presented that a medical episode contributed to the accident. The employer conducted an investigation which included an interview with the claimant and an accident review, which included reviewing the onboard software, photos and interview.

In reviewing the claimant's driving history through the onboard software, it was discovered he had driven the truck 82 miles per hour in a 55 miles per hour zone on May 11, 2019, two days before the accident. The claimant acknowledged this violated the law but that he felt safe and was rushing to avoid having to come in on the weekend.

The claimant was also required to submit to a post-accident drug screening per DOT regulations. He tested positive for marijuana, (Employer Exhibit 7) which he attributed to self-medicating his shoulder, instead of reliance upon opiates. The claimant was not discharged for the results of the drug screening but stated the claimant's positive screening supports he was not operating his vehicle safely in compliance with state law or federal DOT regulation.

Following the discovery of the claimant's operating the vehicle in excess speed on May 11, 2019, combined with the accident on May 13, 2019, the claimant was discharged.

#### **REASONING AND CONCLUSIONS OF LAW:**

**For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying misconduct.**

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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 proof in establishing disqualifying job related 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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

In this case, the administrative law judge carefully evaluated the employer's evidence, which included a first-hand conversation with the claimant about the accident, coupled with hearsay evidence such as the on board computer system against the claimant's evidence and memory. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The undisputed evidence is the claimant was discharged for a single accident in which the claimant's, fifty-three foot truck made a turn, skidded across the road approximately 12-15 feet and overturned. At issue is not whether the accident occurred, but whether the claimant's conduct leading to the accident would meet the definition of misconduct for purposes of unemployment insurance eligibility.

Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991). The claimant denied wrongdoing or causing the accident.

The credible evidence presented does not support that the accident was due to faulty parts or mechanical issues, or due to a medical episode.

In investigating the accident at hand, the employer learned that the claimant had been driving his truck 82 miles per hour in a 55 mile per hour zone two days before the accident. Even though the claimant was not caught by the employer or law enforcement, it was a known violation of law in the employer's vehicle. The employer also learned on the day of the accident, the claimant had marijuana in his system, which also violated law. These were purposeful choices and contrary to the standards the employer has a right to expect of its employees.

Without further assessing the claimant's specific choices in operating the vehicle, those two choices alone violated state law. Based on the evidence presented, the administrative law judge concludes the claimant's operating of the employer vehicle in his final days of employment was in violation of at least two state laws and that more likely than not, his failure to maintain safe control was the cause of the accident. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

**The second issue in this case is the effect of the confidentiality requirements of the federal law.**

The Omnibus Transportation Employee Testing Act of 1991 authorized the United States Department of Transportation (DOT) to prescribe regulations for testing of commercial motor vehicle operators. 49 USC § 31306. Congress required that the regulations provide for "the confidentiality of test results and medical information" of employees tested under the law. 49 USC § 31306(c)(7). Pursuant to this grant of rulemaking authority, the DOT established confidentiality provisions in 49 CFR 40.321 that prohibit the release of individual test results or medical information about an employee to third parties without the employee's written consent. There is an exception, however, to that rule for administrative proceedings (e.g. unemployment compensation hearing) involving an employee who has tested positive under a DOT drug or alcohol test. 49 CFR 40.323(a)(1). The exception allows an employer to release the information to the decision maker in such a proceeding, provided the decision maker issues a binding stipulation that the information released will only be made available to the parties to the proceeding. 49 CFR 40.323(b). Although the employer did not request such a stipulation before the hearing, I conclude that this does cause the information to be excluded from the hearing record. In the statement of the case, a stipulation in compliance with the regulation has been entered, which corrects the failure of the employer to obtain the stipulation before submitting the information to the appeals bureau.

This federal confidentiality provision must be followed despite conflicting provisions of the Iowa Open Records Act (Iowa Code chapter 22), the Iowa Administrative Procedure Act (APA) (Iowa Code chapter 17A), and Iowa Employment Security Law (Iowa Code chapter 96). Iowa Code § 22.2(1) provides: "Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." The exhibits, decision, and audio recording in an unemployment insurance case would meet the definition of "public record" under Iowa Code § 22.1(3). Iowa Code § 17A.12(7) provides that contested case hearings "shall be open to the public." Under Iowa Code § 96.6(3), unemployment insurance appeals hearings are to be conducted pursuant to the provisions of chapter 17A. The unemployment insurance rules provide that copies of all presiding officer decisions shall be kept on file for public inspection at the administrative office of the department of workforce development. 871 IAC 26.17(3).

The federal confidentiality laws regarding drug testing and medical information must be followed because, under the Supremacy Clause, U.S. Const., Art. VI, cl. 2, state laws that "interfere with, or are contrary to the laws of congress, made in pursuance of the constitution" are invalid. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604 (1991). One way that federal law may pre-empt state law is when state and federal law actually conflict. Such a conflict arises when "compliance with both federal and state regulations is a physical impossibility or when a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 605. Although the general principle of confidentiality is set forth in a federal statute (49 USC § 31306(c)(7)), the specific implementing requirements are spelled out in the federal regulation (49 CFR 40.321). The United States Supreme Court has further ruled that "[f]ederal regulations have no less preemptive effect than federal statutes." *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691, 699 (1984) (ruling that federal regulation of cable television pre-empted Oklahoma law restricting liquor advertising on cable television, and Oklahoma law conflicted with specific federal regulations and was an obstacle to Congress' objectives).

In this case, the Iowa Open Records law, APA, and Employment Security law actually conflict with the federal statute 49 USC § 31306(c)(7) and the implementing regulations 49 CFR 40.321 to the extent that they would require the release of individual test results or medical information about an employee to third parties beyond the claimant, employer, and the decision maker in this case. It would defeat the purpose of the federal law of providing confidentiality to permit the information regarding the test results to be disclosed to the general public. Therefore, the public decision in this case will be issued without identifying information. A decision with identifying information will be issued to the parties; but that decision, the audio record, and any documents in the administrative file (all of which contain confidential and identifying information) shall be sealed and not publicly disclosed.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

#### **DECISION:**

The decision of the representative dated June 3, 2019 (reference 02) is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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