

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS C CHAMBERLIN**  
Claimant

**APPEAL NO. 07A-UI-09871-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROLLING OATS LTD**  
Employer

**OC: 09/23/07 R: 04  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Douglas Chamberlin filed a timely appeal from the October 19, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 9, 2007. Mr. Chamberlin participated. Rhonda Leonard, Vice President, represented the employer. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Douglas Chamberlin was employed by Rolling Oats, Inc., as a full-time over-the-road truck driver from August 3, 2006 until September 24, 2007, when Vice President Rhonda Leonard discharged him.

The final incident that prompted the discharge occurred on September 21, 2007. Mr. Chamberlin was driving the employer's truck on the interstate near Des Moines. The driver of a sports utility vehicle (SUV) merged into Mr. Chamberlin's lane without leaving sufficient space. Mr. Chamberlin had to choose between hitting the SUV and moving onto the shoulder. Mr. Chamberlin did not want to harm the occupant(s) of the SUV and moved partially onto the shoulder. Mr. Chamberlin's truck collided with a state vehicle that was parked on the shoulder. Mr. Chamberlin was cited for Failure to Maintain Control. Mr. Chamberlin was also cited for a log book violation. Mr. Chamberlin had unintentionally exceeded the maximum hours of operation. On the day of the accident, Mr. Chamberlin had only been driving five and half hours when the accident occurred and has been off duty 10 hours prior to that. This was Mr. Chamberlin's first log book violation.

Mr. Chamberlin had been involved in, and cited in connection with, an accident that occurred on Interstate 80 between the Intersection with Interstate 280 and Coralville. In that incident, Mr. Chamberlin was the rear vehicle in a three or four vehicle collision. The collision started

when a motorist cut in front of a line of tractor-trailers. The truck driver at the front of the line had to stop suddenly. Mr. Chamberlin's truck collided with the truck in front of him. Mr. Chamberlin was cited for Failure to Maintain Control.

On September 21, Ms. Leonard advised Mr. Chamberlin that the employer's insurance carrier would no longer cover Mr. Chamberlin's operation of the employer's vehicles because Mr. Chamberlin had two accidents within a six-month period. On September 24, Ms. Leonard drafted a discharge letter that she mailed to Mr. Chamberlin on September 26.

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

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.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination 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 Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party’s power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party’s case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The greater weight of the evidence indicates that on September 21, 2007, Mr. Chamberlin was confronted with a “catch-22” situation, not of his making, wherein he had to choose between harming the occupants the SUV that wrongly ventured into this lane or colliding with a parked state vehicle on the shoulder. Mr. Chamberlin took reasonable steps to avoid harming the occupants of the SUV. Mr. Chamberlin’s attempt to avoid harm to the occupants of the SUV resulted in a collision with a state vehicle parked on the shoulder. The greater weight of the evidence indicates that Mr. Chamberlin’s log book violation was not the result of an intentional act. The evidence in the record fails to establish that Mr. Chamberlin was in any way negligent or careless in operating the employer’s truck on September 21 or in completing the log book.

The evidence in the record fails to establish a “current act” of misconduct. See 871 IAC 24.32(8). Accordingly, the administrative law judge concludes that Mr. Chamberlin was discharged for no disqualifying reason. Mr. Chamberlin is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits paid to Mr. Chamberlin.

**DECISION:**

The Agency representative’s October 19, 2007, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs