

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA A PROCTOR
Claimant

APPEAL 16A-UI-02699-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CRST VAN EXPEDITED INC
Employer

OC: 01/24/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 26, 2016, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2016. Claimant participated. Employer participated through human resources specialist, Kim Bateman.

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 was employed full-time as an over-the-road truck driver from May 29, 2015, and was separated from employment on December 4, 2015, when he was discharged.

Claimant was discharged after being ticketed for operating under the influence of or using a narcotic drug/amphetamine, while operating the employer's commercial motor vehicle on December 4, 2015. The employer has a zero tolerance for alcohol and drug use. Claimant was aware of the policy.

On December 4, 2015, claimant was stopped in Ohio while driving a commercial vehicle for the employer. Law enforcement had claimant perform field sobriety tests, which he passed. Claimant was transported by an ambulance to a hospital because he was not feeling well. At the hospital, claimant provided blood and urine samples to law enforcement. The test results came back negative for alcohol, drugs, and prescription drugs. Claimant was initially charged with operating under the influence, but it was thrown out because of his negative drug test results. Claimant has not been found guilty of any under the influence charges. Claimant testified he was not under the influence of any drugs, alcohol, or prescription drugs on December 4, 2015. The employer did not request any drug test from claimant. Claimant testified he was operating the commercial motor vehicle in a safe manner on December 4, 2015.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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.

On December 4, 2015, claimant was operating a commercial motor vehicle in Ohio for the employer. Claimant was stopped by law enforcement and during the stop he was requested to perform field sobriety tests. Claimant testified he passed the field sobriety tests. Claimant was then transported by ambulance to the hospital because he was not feeling well. Claimant provided law enforcement blood and urine samples for them to test for alcohol, drugs, and certain prescription drugs. Claimant testified he was not under the influence and was operating his motor vehicle in a safe manner. Ms. Bateman testified claimant was ticketed for operating under the influence of or using a narcotic drug/amphetamine, while operating the employer's commercial motor vehicle on December 4, 2015. However, claimant testified the charge was dismissed after claimant's drug tests came back negative for all substances. The employer did not request claimant submit to any drug testing. The reason claimant was discharged, being charged with being operating under the influence of or using a narcotic drug/amphetamine, while operating the employer's commercial motor vehicle on December 4, 2015, was dismissed.

The employer failed to meet its burden of establishing disqualifying job misconduct. Claimant was merely charged with an offense involving operating a motor vehicle under the influence, but that charge was dismissed after law enforcement's drug testing came back negative. No evidence was presented to show claimant had committed substantial misconduct on December 4, 2015. Benefits are allowed.

DECISION:

The February 26, 2016, (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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs