

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**RONALD S THOMAS**  
Claimant

**APPEAL NO. 18A-UI-11894-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RENZENBERGER INC**  
Employer

**OC: 11/11/18**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Renzenberger, Inc. (employer) appealed a representative's November 28, 2018, decision (reference 01) that concluded Ronald Thomas (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 28, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Kelly Davis, Site Supervisor. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 10, 2018, as a full-time road driver. The claimant signed for receipt of the employer's handbook. When he was hired, the claimant told the employer about his driving record. He said he had a wrongful turn in Wisconsin on June 14, 2018, and a driving under suspension.

The employer did a Department of Transportation background check on the claimant after he was hired. On November 9, 2018, the employer terminated the claimant for unknown reasons related to the background check.

The claimant filed for unemployment insurance benefits with an effective date of November 11, 2018. The employer participated personally at the fact finding interview on November 27, 2018, by Terry Dotson, Equifax Representative. The Equifax Representative relied on information from the employer that said the claimant quit work. The Equifax Representative did not have firsthand knowledge of the events leading to the separation.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident provided by the employer occurred and was reported before the claimant's hire date of October 10, 2018. The claimant was not discharged until November 9,

2018. The employer has failed to provide any evidence of willful and deliberate work-related misconduct which was the final incident leading to the discharge. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's November 28, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs