

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ISAAC KAMBALE
Claimant

APPEAL 21A-UI-09166-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHNEIDER NATIONAL CARRIERS INC
Employer

**OC: 06/1420
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Schneider National Carriers Inc, the employer/appellant, filed an appeal from the March 15, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 18, 2021. The employer participated through Cody Edwards, driver business leader and RoxAnne Rose, hearing representative from ADP. Mr. Kambale participated at testified. Official notice was taken of the administrative record. Employer's Exhibit 1 was admitted into evidence.

ISSUE:

Was Mr. Kambale discharged for disqualifying job-related misconduct?
Was Mr. Kambale overpaid benefits?
If so, should he repay the benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Kambale began working for the employer on September 11, 2018. He worked as a full-time over the road team driver. The employer terminated his employment on January 15, 2021

The employer's policy provides that drivers have the option to not drive if the driver concluded that driving conditions are unsafe, including inclement weather. The employer consistently told drivers to not drive in unsafe working condition, including weather so as to not put the public, themselves and the employer truck in danger. Employees who violate the policy are subject to a verbal warning, training, written warning and termination of employment. If a driver's truck jack-knifes, the driver's employment is automatically terminated. Mr. Kambale acknowledged receiving the policy on his hire date.

On January 15, 2021, Mr. Kambale dropped off a loaded trailer and picked up an empty trailer to bring the empty trailer to a different location. There was snow on the ground but the weather was calm. Mr. Kambale decided to drive the truck and the empty trailer. Another employee rode with Mr. Kambale. At some point the weather was not calm but, in Mr. Kambale's view, it was still safe to drive. Mr. Kambale slowed down to about 33-35 miles per hour. Mr. Kambale was driving on a state highway in Nebraska. A gust of wind hit the empty trailer and pushed it toward the center yellow line and the oncoming traffic lane. Mr. Kambale pushed on the breaks and steered to slow the truck down and get the trailer out of the other lane. The truck and trailer slid into the ditch in jackknife fashion. Neither Mr. Kambale nor the other employee was injured.

Mr. Kambale called the employer and told them about the accident. A motorist called the police. Mr. Kambale gave the police a statement. He was not cited for any traffic violations. The employer arranged a hotel and rental car for Mr. Kambale and the other employee. The employer told Mr. Kambale to wait for word from them. The employer investigated the accident. The employer concluded that Mr. Kambale was driving too fast, braked too hard, and should have not driven at all because of the weather.

Prior to the accident, the employer had given Mr. Kambale two written warnings for stability control incidents: one on June 10, 2019 and one on August 5, 2019. In both of these incidents, Mr. Kambale was warned that he should drive in a manner that kept the truck stable to protect himself, the public and the employer's property. The warnings stated that future discipline could result in termination of employment. Mr. Kambale took the write up seriously and had no further disciplinary actions after August 5, 2019.

On January 22, Mr. Kambale texted Mr. Edwards asking for update. Mr. Edwards told him to call the training department so he could schedule a driving training. Mr. Kambale did so. The training department told Mr. Kambale that he would have to log into his employer issued tablet to schedule the training. Mr. Kambale told the training department that the tablet was in the truck so he could not log on. The call ended.

In the meantime, the employer decided to terminate Mr. Kambale's employment based on the two prior write ups and the findings of the investigation. Later in the day on January 22, Mr. Edwards called Mr. Kambale and told him that his employment was terminated because he was involved in a jackknife accident and company equipment was damaged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Kambale 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).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

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 Mr. Kambale was discharged was an isolated incident of poor judgment. In this case, the employer has only shown that Mr. Kambale 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). Mr. Kambale 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). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided Mr. Kambale is otherwise eligible.

Since Mr. Kambale is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The March 15, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Kambale 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.



Daniel Zeno
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July 1, 2021
Decision Dated and Mailed

dz/lj