

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**IVAN L BRESHEARS**  
Claimant

**ELDER CORPORATION**  
Employer

**APPEAL 17A-UI-04191-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/20/16**  
**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 7, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged for performing unsatisfactory work, which is not disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on May 10, 2017. The claimant, Ivan L. Breshears, participated. The employer, Elder Corporation, participated through CJ Street, Human Resource Assistant. Employer's Exhibits 1 through 3 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record and the fact-finding documentation.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a driver, from March 25, 2013, until March 23, 2017, when he was discharged for misconduct. On March 14, 2017, claimant got into his work truck and found that the breaks were locked. Street testified that when claimant discovered this, he should have immediately exited the truck and reported this issue to the employer. Instead, claimant proceeded to rock the truck back and forth to try and unlock the brakes, which caused damage to the rear of the truck. Claimant testified that the mechanic was with him when this occurred, and they both tried to rock the truck back and forth to unlock the brakes. The mechanic said he would talk to Brian, the head foreman, about the issue. Claimant then went to his supervisor to report there was an issue with his truck. Claimant then took a different truck and began working.

Street testified that claimant's supervisor instructed the mechanic to take a look at claimant's truck. During this inspection, the mechanic determined that based on the damage caused,

claimant had tried to rock the truck back and forth to unlock the brakes. The employer called claimant into the office on March 23 to discuss the issue, and he admitted that he rocked the truck and caused the damage. At that point, the employer discharged claimant. Street testified that claimant knew he needed to immediately report that his brakes were locked. Claimant denies that any similar incident had happened in the past, and he had never been warned for safety issues or failing to report mechanical issues in the past.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$894.00, since filing a claim with an effective date of November 20, 2016, returning to work after a layoff and subsequently being discharged, for the two weeks ending April 1, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

### **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). 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.

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant presented credible testimony regarding the events of March 14, 2017.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Here, claimant's decision to rock the truck to try and unlock the breaks was merely an isolated incident. The mechanic's presence and assistance during this process indicates to the administrative law judge that claimant was not acting recklessly with company property. The administrative law judge believes that claimant did not realize he caused any damage during this process until he was contacted by the employer following the incident, and therefore he could not have been expected to immediately report the damage to the truck. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed, provided claimant is otherwise eligible. As claimant's separation is not disqualifying, the issues of overpayment, repayment, and chargeability are moot.

**DECISION:**

The April 7, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

---

Elizabeth A. Johnson  
Administrative Law Judge

---

Decision Dated and Mailed

lj/rvs