

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY L KNOWLES
Claimant

APPEAL NO. 07A-UI-02592-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

**OC: 02/04/07 R: 12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Anthony Knowles filed a timely appeal from the March 9, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 16, 2007. Mr. Knowles participated. Attorney John Fatino represented the employer and presented testimony through Jim Wilkins, Vice President of Safety and Human Resources, and Tom Walker, Terminal Manager. The administrative law judge received employer's Exhibits One through Six 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: Anthony Knowles was employed by Decker Truck Line as a full-time truck driver from February 1, 2006 until February 1, 2007, when Terminal Manager Tom Walker and Director of Human Resources Judy Larson discharged him for failure to perform his assigned duties as instructed. Mr. Knowles worked out of the Hammond, Indiana Terminal. Tom Walker managed that terminal. Mr. Knowles worked as part of a team of drivers "dedicated" or assigned to haul material from the U.S.G. plant located on the East side of Chicago. Mr. Walker generally assigned all of the dedicated drivers to haul two loads per day. The load to be hauled a shorter distance would be scheduled as the first load of the day. Though the businesses receiving the materials provided a time window for deliveries that might span several hours, Mr. Walker had repeatedly instructed Mr. Knowles to make his first delivery as soon as the receiving entity opened for business so that he could get back to the U.S.G. facility in Chicago in time to reload and deliver the second load before the receiving business' delivery window closed for the day. This directive was consistent with U.S.G.'s expectation that the first load of the day be delivered to the customer no later than 7:00 or 8:00 a.m. Mr. Knowles routinely disregarded Mr. Walker's directives and deemed it acceptable to make deliveries at any time the receiving business would accept them. Mr. Knowles often made deliveries later than directed by Mr. Walker and, on occasion, arrived so late that he had to wait overnight at the receiving business to be unloaded

the next morning. Mr. Knowles had previously demonstrated the ability to deliver 30 loads per month. After the holidays, Mr. Walker became aware that Mr. Knowles was experiencing problems with his girlfriend that interfered with Mr. Knowles' employment. In January, Mr. Knowles delivered only 15 loads. Because Mr. Knowles had become unreliable, Mr. Walker started to schedule him for just one load per day.

On January 2, Mr. Knowles was scheduled to deliver two loads in Illinois. Mr. Knowles delivered the second load a day late because he took an exit ramp too fast, his load shifted and he had to spend several hours restacking the load.

On January 11, Mr. Knowles was scheduled to deliver a load in Appleton, Illinois, a few hours from Chicago. The receiving business' delivery window was 8:00 a.m. to 3:00 p.m. Mr. Knowles loaded at U.S.G. at 6:30 a.m. and delivered the load to Appleton at 2:20 p.m., almost eight hours later.

On January 15, Mr. Knowles was scheduled to deliver a load to Green Bay, Wisconsin no later than 3:00 p.m. Mr. Knowles arrived at 4:00 p.m. and had to wait until the next day to have his truck unloaded.

On January 17, Mr. Walker documented that Mr. Knowles had been late on several loads, that Mr. Walker had talked to Mr. Knowles about the problem, that Mr. Knowles acknowledged the employer's concerns, but continued to make late deliveries.

On January 20, Jim Wilkins, Vice President of Safety and Human Resources, documented that Mr. Knowles had left his company truck parked on a Gary, Indiana street in violation of the local ordinance. The truck had been towed by the City. The employer had to pay \$385.00 to redeem the truck from the impound lot. The employer passed the expense along to Mr. Knowles.

On January 22, Mr. Walker used the employer's Qualcomm system to dispatch Mr. Knowles to deliver a load. Mr. Knowles did not respond, so Mr. Walker had to reassign the load.

On January 22-24, Mr. Walker and Ms. Larson documented that the employer had considered terminating Mr. Knowles for failure to maintain appropriate contact with the employer, but had decided to give Mr. Knowles another chance. On January 24, Ms. Larson mailed Mr. Knowles a formal reprimand for late deliveries and failure to maintain proper contact with the employer. Ms. Larson warned Mr. Knowles that further similar conduct could place his employment in jeopardy.

The final incident that prompted the discharge occurred on January 26, 2007. Mr. Walker had dispatched Mr. Knowles to deliver a load to Round Lake Park, Illinois. The receiving business' delivery window was 6:00 a.m. to noon. Mr. Walker knew that Mr. Knowles had delivered a load in Green Bay, Wisconsin at 2:38 p.m. the previous day and should have had enough time to arrive at the Round Lake Park facility by 6:00 a.m. At 8:00 a.m., Mr. Walker determined Mr. Knowles' current location and concluded Mr. Knowles would be hard pressed to make it to Round Lake Park facility by 11:30 or noon. At this point, Mr. Walker decided to discharge Mr. Knowles from the employment.

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.

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 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).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence in the record establishes that Mr. Knowles had the ability to perform satisfactory work in compliance with Mr. Walker's directives regarding timely deliveries, but elected not to do so. Mr. Knowles performed the same work as a "dedicated" driver for one year. Before the turn of the year, Mr. Knowles performed his work in a satisfactory fashion. After the turn of the year, Mr. Knowles repeatedly failed to comply with the employer's reasonable directives to make timely deliveries. Mr. Walker reduced Mr. Knowles' work responsibilities to make it easier for him to comply with the employer's directives. The final incident that prompted the discharge involved Mr. Knowles' failure to follow Mr. Walker's directive to make a timely delivery on January 26. The event occurred after several similar incidents. The administrative law judge finds not credible Mr. Knowles' assertion that late deliveries were attributable to inclement weather and notes that Mr. Knowles made no mention of inclement weather at the fact-finding interview.

Mr. Knowles' conduct demonstrated insubordination and ongoing negligence. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Knowles was discharged for misconduct. Accordingly, Mr. Knowles is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Knowles.

DECISION:

The claims representative's March 9, 2007, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he

has worked in and paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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