

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK P GEGENHEIMER
Claimant

APPEAL NO. 14A-UI-05080-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIEBE TRUCKING INC
Employer

**OC: 03/30/14
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the April 23, 2014, (reference 02) unemployment insurance decision that allowed benefits. After both parties agree to waive due notice a hearing was held on May 19, 2014. The claimant did participate and was represented by Corey L. J. Walker, attorney at law. The employer did through Dennis Peterson, Human Resources Business Partner and Sara Liebe, Vice-President and Stacey Early. Claimant's Exhibits A through C were entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct or did he voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road driver beginning on October 29, 2007 through April 1, 2014 when he was discharged. The claimant sustained a work-related shoulder injury in November 2012. As a result of that injury he has permanent medical restrictions that make it impossible for him to work any longer as a truck driver for this employer. The employer had been accommodating his light-duty work restrictions up until October 2013 by having the claimant work for Habitat for Humanity, and paying him off of their own payroll. That work is now ended and because the claimant is not able to return to work as a truck driver, the position he was hired to perform, the employer discharged him from employment. The claimant's employment ended for no other reason other than his permanent work restrictions make it impossible for him to return to work for this employer as a truck driver.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa 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, employer incurs potential liability for unemployment insurance benefits related to that separation.

The claimant was separated because he is no longer physically able to perform the job duties of a truck driver for this employer due to his current permanent work restrictions due to an on-the-job injury. That circumstance or situation is not considered to be intentional work-related misconduct on the part of the claimant. A claimant is disqualified from receipt of benefits only for job-connected misconduct. He thus cannot be disqualified from receipt of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The April 23, 2014, (reference 02) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs