

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM W LESTER
Claimant

APPEAL 17A-UI-02435-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHNSON MOVING & STORAGE
Employer

OC: 02/05/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 27, 2017, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on March 28, 2017. Claimant participated and was represented by Edward Cox, Attorney at Law. Employer participated through human resource director Maggey Johnson.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time household mover/supervisor/driver for 18 months through Tuesday, December 27, 2016. At the end of the last day of the most recent job owner/driver Randy Johnson told claimant there may be a “pop-up” small, local job using a straight truck for Tuesday, December 27. The practice for notifying workers of jobs is for either Randy or Maggey Johnson to text the worker the evening before the job. Sometimes workers are informed there may be a job and to keep the day open and occasionally Randy would stop by claimant’s home to notify him. The Johnsons did not text claimant the evening of December 26 because there was no work for December 27. He stayed awake until midnight waiting for a text and had difficulty sleeping because of recent medication changes during the last week. The usual reporting time for jobs was 7:30 a.m. at the Johnson residence where the trucks are parked and workers meet. The home is not in a residential neighborhood. Claimant did not think about texting Randy to see if there was work before driving to the Johnson residence at 7:30 a.m.. He sat in his vehicle outside and honked his horn a few times. Randy opened the window and told claimant he had woken him up and to go home since there was no work. Claimant told him he had bills and asked, “what am I fucking supposed to do, go look for another job?” Randy told him he should. Claimant asked for his paycheck and Randy told him it would be available Friday, December 30. Overall, claimant was there about 20 minutes and there was no negative impact on the business. Later that morning claimant reported with his

mother to the employer's office/furniture store on the downtown square asked Maggey for his paycheck. She told him the next payday Friday, December 30 and they left.

Throughout the hearing, employer described his behavior as "erratic" but was aware of claimant's diagnosis as paranoid schizophrenic and that he was taking prescription medications. Claimant participates in managed care program Medicaid for Employed People with Disabilities (MEPD), which allows persons with disabilities to work and continue to have access to medical assistance. The employer did not request that he visit his doctor or discuss with him their concerns about his behavior being "erratic." The employer did have a verbal discussion with claimant on December 1, 2016, about "erratic behavior" described as speeding in the company truck and pulling out in front of other drivers, and smoking in the truck. Claimant denies being a smoker but had a verbal warning on November 1, 2016, about smoking in the truck. There was also verbal instruction on October 20, 2016, not to speed while driving the company truck. Claimant did not drive company vehicles after December 1 and did not smoke in any employer truck after that.

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 section 96.5(2)a provides:

Causes for disqualification.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct “must be substantial” to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). “Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.” *Id.* (citation omitted). ...the definition of misconduct requires more than a “disregard” it requires a “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.” Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Whether an employee violated an employer’s policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. See *Lee v. Emp’t Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (“Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.” (Quoting *Reigelsberger*, 500 N.W.2d at 66.)). “Balky and argumentative” conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. __-__, Iowa Ct. App. filed __, 1986).

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. The incident for which claimant was discharged was an isolated incident of poor judgment and inasmuch as employer had not previously warned claimant about the issue leading to the separation, it 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. 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. A warning for speeding or smoking is not similar to unruly, disruptive or erratic behavior and the employer’s simple accrual of a certain number of warnings counting towards discharge does not establish repeated negligence or deliberation and is not dispositive of the issue of misconduct for the purpose of determining eligibility for unemployment insurance benefits.

DECISION:

The February 27, 2017, (reference 01) unemployment insurance decision is reversed. Claimant 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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