

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRENDON SCHNELL
Claimant

APPEAL NO: 15A-UI-14369-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURRY'S BACKHOE SERVICE INC
Employer

**OC: 11/29/15
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 18, 2015 (reference 01) decision that allowed benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 22, 2016. The claimant participated in the hearing. Calvin Keller, Safety Manager, and Brad Nichols, General Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision allowing benefits to the claimant was mailed to the employer's last-known address of record on December 18, 2015. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by December 28, 2015. The appeal was actually filed December 28, 2015. The appeal was run through the employer's mail service and then dropped in the mail box between 5:00 and 5:30 p.m. on December 28, 2015. The last pick-up on that postal box was at 5:30 p.m. Consequently, the administrative law judge finds the employer's appeal is timely.

The claimant was employed as a full-time regional truck driver for Curry's Backhoe Service from July 28, 2014 to November 30, 2015. He was discharged for a late delivery.

The claimant was scheduled to deliver to St. Genevieve, Missouri on November 23, 2015. The dispatcher told the claimant he was scheduled to go to St. Genevieve November 23, 2015 on Friday, November 20, 2015. The dispatcher typically followed up the Friday call with a text message stating the address. The dispatcher told the claimant he had to deliver between 8:00 a.m. and 3:00 p.m. and that St. Genevieve was close to St. Louis. The bill of lading also listed a delivery time between 8:00 a.m. and 3:00 p.m. Consequently, the claimant arrived in the yard to leave at 10:02 a.m. When he got in the truck and turned on People Net he saw that

St. Genevieve was one hour south of St. Louis. The trip to St. Louis is four hours long and the claimant would have arrived by 2:00 p.m. Instead, because St. Genevieve was one hour south of where he thought he was going that added an hour to his trip which would have caused him to probably be late for his delivery. The claimant's truck broke down approximately 15 minutes away from St. Genevieve and he was late in delivering his load. As a result he was not able to make his other pick-ups in the St. Louis area to deliver on his return to Iowa.

The claimant had not received any previous documented verbal warnings or any written warnings during his tenure with the employer. The employer terminated the claimant's employment November 30, 2015 for leaving late November 23, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the 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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant should have checked People Net before exiting the truck Saturday, November 21, 2015 to see where he was scheduled to go Monday, November 23, 2015, he did not do so and instead relied on his dispatcher who told him he had to deliver to St. Genevieve between 8:00 a.m. and 3:00 p.m. The claimant believed St. Genevieve was near St. Louis and did not know it was one hour south of St. Louis until he got in the truck November 23, 2015. He still had time to deliver to St. Genevieve by 3:00 p.m., although it would have been close, had his truck not broke down between St. Louis and St. Genevieve.

The claimant may have made a mistake in not checking People Net on November 21, 2015. There is no evidence, however, suggesting the claimant intentionally left late, not caring if he would not make his delivery on time. Instead, he believed he was going to St. Louis and could deliver between 8:00 a.m. and 3:00 p.m. and planned accordingly.

Under these circumstances, the administrative law judge concludes this was an isolated incident of poor judgment on the part of the claimant. He made a mistake and had not received any previous warnings that put him on notice his job was in jeopardy. The claimant did not commit a deliberate act or omission that constitutes a material breach of the worker's duties and obligations to the employer as is required by Iowa law before misconduct can be established. Consequently, benefits are allowed.

DECISION:

The December 18, 2015 (reference 01) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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