

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DARRELL J MCCLURE**  
Claimant

**PIONEER HI-BRED INTERNATIONAL INC**  
Employer

**APPEAL 20A-UI-13226-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/19/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 13, 2020 (reference 03) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 7, 2021. The claimant, Darrell J. McClure, participated personally and was represented by Attorney Megan Flynn. The employer, Pioneer Hi-Bred International Inc., participated through witnesses Dan Dehrkoop and Josey Hubanks. Claimant's Exhibit A was admitted. Employer's Exhibits 1 through 4 were admitted. The administrative law judge took official notice of the claimant's administrative records.

**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 from December 22, 1983 until July 10, 2020. He worked full-time as a production technician at the employer's warehouse. Part of his job duties included driving a forklift. Claimant had been trained on how to drive the forklift. See Exhibit A.

On June 29, 2020 the claimant was involved in an incident where his forklift collided with another co-worker's forklift. The other co-worker was a temporary employee who was placed to work at this location.

Both workers were reversing, the claimant from the pooling lane and the other employee from the trailer. Claimant looked left and right before moving in reverse. As he was starting to move backwards the claimant had his hand on his horn to beep his horn. Both claimant and the co-worker impacted. Claimant was operating the forklift at 3 mph and the other co-worker was operating the forklift at 6.6 mph. The other co-worker admitted that he did not look before reversing. On June 29, 2020 the claimant was told that the incident may result in discipline. The claimant was discharged from employment for this final incident on July 10, 2020. The

other co-worker remains working on site to date. Following the June 29, 2020 incident, the claimant was allowed to continue operating forklifts on site until his discharge.

The claimant had previous discipline regarding an April 2, 2020 incident that he self-reported to Mr. Hubanks. The incident involved a trailer not being properly locked on a dock when the claimant was working in it. Claimant informed Mr. Hubanks that the light was green (indicating that it was safe for him to enter the trailer) when he entered it. Co-workers reported that the light was red, and not green, when the claimant entered the trailer. Claimant received a written discipline on April 6, 2020 for a safety violation regarding this April 2, 2020 incident. See Exhibit 2. Claimant disagreed with the written warning because the light was green when he entered the trailer.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. 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.*

The administrative law judge concludes that the light was green when the claimant entered the trailer on April 2, 2020. Further, the administrative law judge concludes that the claimant had

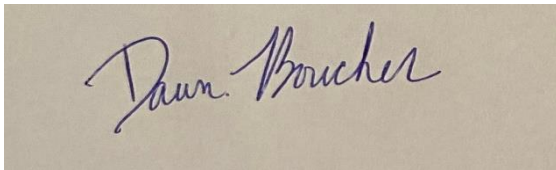
looked to the right and left prior to reversing and was in the process of honking his horn when the impact with the co-worker's forklift occurred on June 29, 2020.

In this case, claimant's actions were not misconduct. Claimant believed that he had properly looked in both directions to ensure a clear path on June 29, 2020 prior to reversing. If anything, claimant's actions were an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986).

The employer has failed to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning which rises to the level of willful misconduct. The claimant was allowed to continue operating a forklift for 11 days following this incident. Further, the co-worker, who was travelling faster than the claimant, was still allowed to perform services for the company, even though he engaged in similar conduct. As no final incident of job-related misconduct occurred, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The October 13, 2020 (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

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Dawn Boucher  
Administrative Law Judge

January 25, 2021  
Decision Dated and Mailed

db/mh