

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY J DELLINGER
Claimant

APPEAL 21A-UI-24638-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-AMERICA PUBLISHING CORP
Employer

**OC: 10/10/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)c - Discharge for Violation of Rules

STATEMENT OF THE CASE:

Claimant, Jeffrey Dellinger, filed an appeal from the November 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon an October 13, 2021 discharge for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2022. Claimant participated. Employer, Mid-America Publishing Corporation, failed to call into the hearing and did not participate. Judicial notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the undersigned finds:

Claimant was employed as a part time driver. His first day of work was November 13, 2013. Claimant's last day of work was October 13, 2021, when he was discharged from work for a driving incident that happened the day before when he was driving the company vehicle.

On October 12, 2021, claimant was driving the company vehicle on Interstate 35 in a 70 mph zone. Claimant was discharged regarding his speeding and erratic driving, weaving in and out of the traffic, flashing his headlights, resulting in two other drivers calling the employer (company name and phone number on vehicle) to complain. Claimant at first testified he did nothing wrong, but when asked about telling the fact finder that he agreed he was driving erratically and speeding, agreed he had and had no explanation as to why his story changed from then to now.

Employer has an employee handbook. Claimant received a copy of the handbook. Claimant asserts he does not know whether the handbook has rules regarding operation of company vehicles. Claimant admits to having two prior disciplinary warnings regarding his driving of

company vehicles, one time for erratic driving behavior. Claimant was aware that his job was in jeopardy should he drive in an erratic manner again.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

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 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 decision in this case rests, at least in part, on the credibility of the witnesses. 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.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing and considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events that is more damaging to him to be more credible than the claimant's version of events that are more lenient of claimant's actions. Claimant's testimony was inconsistent, contradictory and many times, incredible.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has work rules regarding the operation of company vehicles. Claimant knew about them, contrary to his testimony, as he acknowledged he was disciplined twice previously regarding these rules regarding his driving behavior.

Claimant once again drove in an erratic and inappropriate way, as described above, to point that two different drivers called in to report his behavior. Claimant violated the workplace rules regarding driving. He had been twice warned. The discharge was for disqualifying misconduct.

DECISION:

The November 4, 2021, (reference 01) unemployment insurance decision is **AFFIRMED**. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Darrin T. Hamilton
Administrative Law Judge

January 28, 2022
Decision Dated and Mailed

dh/mh