

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WESLEY C BEARDSLEY
Claimant

APPEAL NO: 18A-UI-10816-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAILCREW XPRESS LLC
Employer

OC: 10/07/18

Claimant: Respondent (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.3(7) – Benefit Overpayment

STATEMENT OF THE CASE:

Railcrew Xpress, LLC, the employer filed a timely appeal from a representative's unemployment insurance decision dated October 29, 2018, (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant had been discharged for no disqualifying reason. After due notice was provided, a telephone hearing was held on November 15, 2018. Although duly notified, there was no participation by the claimant. Employer participated by Ms. Tara Johnson, Human Resource Director and Ms. Cherie Rutan, Supervisor Boone/Des Moines service areas. Employer's Exhibits A through E were admitted into the hearing record.

ISSUES:

Whether the claimant was discharged for work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

Whether the claimant has been overpaid unemployment benefits.

If there has been an overpayment, is the claimant liable to repay the overpayment or should the employer be chargeable based upon the employer's participation in the fact-finding.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Wesley C. Beardsley as employed by Railcrew Xpress, LLC from February 5, 2014 until October 5, 2018, when he was discharged. Mr. Beardsley was employed as a railcrew driver. He was classified as a full-time employee and was paid by the hour. His last immediate supervisor was Cherie Rutan.

Mr. Beardsley was discharged from his employment with Railcrew Xpress, LLC after he was involved in a property damage driving incident on October 4, 2018. On that date, Mr. Beardsley was driving a company railcrew van with railcrew members aboard the van, when he side swiped a vehicle while changing traffic lanes.

Mr. Beardsley reported the mishap, and it was captured on cameras located on the vehicle itself. An insurance claim was made for approximately \$3,000.00 against the company.

After reviewing the on-board camera depictions, a company review team and the claimant's supervisor concluded that Mr. Beardsley was not being attentive to his driving and failed to observe the traffic in front of the van had remained stationary, before he moved forward. The employer also observed that the claimant had not looked to the right of the van he was driving before entering the right lane and striking a vehicle that was in that lane of traffic.

Mr. Beardsley had received safety training from the company, and the requirement that drivers operate company vehicles in a safe manner. Driving as well as other safety rules were reviewed with the claimant and other drivers on a regular basis. Mr. Beardsley had demonstrated the ability to operate the company van safely. In February, 2017, he violated a safety rule while operating the company railcrew van and had been warned at that time that any future safety violations might result in his termination of employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work-connected misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this case, the claimant was discharged after depictions taken of the incident by company on-board cameras showed Mr. Beardsley failing to follow reasonable safe driving practices. The on-board camera depictions were reviewed by a company's review team as well as by Ms. Rutan. The tapes showed Mr. Beardsley had resumed in a forward motion of the van without first ensuring that the roadway ahead was clear, and also showed Mr. Beardsley turning into the adjacent traffic lane without looking first to ensure that it was safe to change lanes. Employer was reasonable in concluding that the claimant did not follow safe driving practices, after being warned. There being no evidence to the contrary, the employer has sustained its burden of proof establishing work connected misconduct. Accordingly, unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

The administrative record reflects that the claimant has received unemployment benefits in the amount of \$494.00 since filing a claim for benefits with an effective date of October 7, 2018, for benefits week ending October 13, 2018 and October 20, 2018. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a first-hand witness available for rebuttal.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the employer failed to participate in the initial proceeding, the employer's account will be charged for the overpaid benefits. Iowa Code section 96.3(7)a, b.

The claimant received benefits but has been denied benefits as a result of this decision. The claimant, therefore, was overpaid benefits.

Because the claimant did not receive benefits due to fraud or willful misrepresentation and employer failed to participate in the finding interview, the claimant is not required to repay the overpayment and the employer remains subject to charge for the overpaid benefits. In this case, the claimant received benefits but was not eligible for those benefits. Since the employer did not participate in the fact-finding interview, the claimant is not obligated to repay to the Agency the benefits he received and the employer's account shall be charged.

DECISION:

The representative's unemployment insurance decision dated October 29, 2018, reference 01 is reversed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. Claimant has been overpaid job insurance benefits in the amount of \$494.00. Claimant is not obligated to repay that amount. The employer's account shall be charged based upon the employer's failure to participate in the fact-finding interview.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn