**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**DOMINIC MCNEELEY**
Claimant

**DICKERSON MECHANICAL**
Employer

**APPEAL NO. 11O-UI-11565-WT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 04/03/11**
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a fact-finding decision dated April 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. A hearing was held on May 18, 2011 and benefits were granted on the basis of a voluntary quit with good cause. The employer appealed and the matter was remanded to the Appeals Bureau with an instruction that the Administrative Law Judge had incorrectly interpreted the law with regard to a voluntary quit in lieu of discharge. After due notice, a telephone conference hearing was scheduled for September 21, 2011. The undersigned believed the record was completed at that point. Unfortunately, the matter was rescheduled again due to an error by the undersigned and the record was not completed until the subsequent hearing on May 11, 2012. Exhibits 1 through 3 were admitted into evidence. In addition, the entire file from the original hearing, including the transcript (11A-UI-05519) was reviewed and is considered part of the record for this proceeding.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant began working for the employer as a full-time apprentice as of November 7, 2007. On April 3, 2011, claimant was involved in an accident in a company vehicle. Claimant had taken the vehicle with the permission of co-owner, Kathey Dickerson, on Friday, April 1, 2011. He intended to clean the vehicle, which he did on Saturday, April 2, 2011. On Sunday April 3, 2011, claimant drove to Ankeny to purchase supplies for work on his company credit card. Upon return, he had a rear ended another vehicle in a low-speed collision. He assessed the damage and exchanged information with the other driver. He believed there was no damage to the car he hit. He did not report the accident to the employer, because he did not believe the other car was damaged.

The employer learned of the accident on April 4, 2011, when the driver called in about her car. The employer was not insured for this type of accident due to personal use. Employer testified that the insurance carrier advised to fire the claimant. Claimant was compelled to quit in lieu of

discharge on April 4, 2011 by employer. The employer's motive in allowing claimant to quit in lieu of discharge was decency.

**REASONING AND CONCLUSIONS OF LAW:**

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.

871 IAC 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.

871 IAC 24.32(4) provides:

> (4) Report required. The claimant's statement and the 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.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

The term "misconduct" under Iowa law may encompass many different types of conduct. The phrase "material breach of a worker's contract of employment" is significant. This phrase essentially means that the employer must prove the worker intentionally violated a reasonable employment standard. The rule essentially anticipates two general types of misconduct under Iowa law, broadly categorized as universal misconduct and work rule misconduct.

Universal misconduct would include misconduct that any reasonable worker should reasonably know is a violation of any employer's work standards. Examples of this type of misconduct would include theft from the employer, initiating violence in the workplace without justification, intentionally damaging property and other intentional acts evincing a willful disregard for the employer's interest. In other words, any worker in the competitive job market should understand that they would be fired for such a violation regardless of whether a formal or specific work rule is in place.

"Work rule" misconduct would include reasonable standards or rules that an employer sets for its place of employment which a worker knowingly violates. In essence, it is a standard because the employer said it is. In such instances, the burden is upon the employer to demonstrate that it had a reasonable work rule, the worker was aware of the rule, and knowingly violated the rule. Examples of this type of "work rule" misconduct would include tardiness violations, violations of a cell phone use policy, and dress code violations. Importantly, different employers and different industries may have different reasonable work standards on these topics, and acceptable behavior is often relative.

In this matter, the evidence established that the claimant took a company vehicle home over the weekend with permission of a co-owner. The precise parameters of what the claimant was allowed to do with the vehicle are unclear. The employer testified that he was only allowed to clean the vehicle up over the weekend. The employer's witness, co-worker Doug McKim, confirmed this and testified that driving to pick up parts or equipment would be completely disallowed.

Nevertheless, there is nothing in the Employee Handbook that specifically addresses this scenario and the claimant testified credibly that he had engaged in this behavior in the past with no consequence. He had never been warned for this type of conduct. It is apparent from the employer's testimony that they did not truly believe that he was engaged in a work errand. Yet, this could have been checked easily by reviewing whether he had made purchases on his company credit card. The employer apparently reported to the insurance carrier that the claimant was engaged in personal use of the vehicle. It is unclear whether the employer ever really investigated the claimant's precise use of the vehicle. In light of the findings above, the greater weight of evidence affirms that the claimant was engaged in a work-related activity when the accident occurred. He was not on notice that this type of conduct would lead to his termination.

The claimant did fail to report this accident immediately. The accident occurred late in the afternoon on April 3. The accident victim reported the occurrence to the employer early in the morning on April 4. This was an error in judgment on the claimant's part. He apparently believed it was within his discretion to decide not to report it because he did not see any damage on the victim's car. He should have reported it. This breach, however, was an isolated error in judgment, not an intentional act of misconduct against the employer's interest.

The issue that is before the undersigned is not whether the termination was fair or legal. The only issue before the undersigned is whether the employer has proven, by a preponderance of evidence, that the claimant committed misconduct. The last incident, which brought about the discharge, fails to constitute misconduct. While it may have warranted the drastic action taken by the employer, it does not rise to the level of misconduct under Iowa law. As such, claimant is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The fact-finding decision dated April 22, 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh
Administrative Law Judge

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Decision Dated and Mailed

jlw/kjw