

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRUCE COTTON
Claimant

ALTER TRADING CORPORATION
Employer

APPEAL 21A-UI-12010-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 23, 2021, (reference 01) unemployment insurance decision that denied benefits based upon a finding that he was discharged for a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on July 15, 2021. Claimant Bruce Cotton participated and testified. Witness Dan Barry testified on claimant's behalf. Employer Alter Trading Corporation participated through regional human resources manager Myles Valencia and operations manager Alex Lewis. Employer's Exhibits 1 – 3 were received.

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 full time as a CDL driver from October 5, 2017, until March 23, 2021, when his employment ended.

Employer maintains a safety policy which assigns points for driving violations or citations and accidents. (Exhibit 1). If an employee receives three or more points within a 36-month rolling calendar, the employee will be excluded from operating a company vehicle. An at fault road vehicle accident is worth two points and a moving violation, such as speeding, is worth one point. Claimant was aware of the policy.

Claimant received two points on May 5, 2020, when he was involved in an at-fault accident. Claimant received one point on January 30, 2020, for speeding, but that point was removed after claimant attended a defensive driving course.

On March 17, 2021, claimant received a citation for speeding. He asked the officer who pulled him over to give him a verbal warning because if he received a written warning his employer would terminate his employment. The officer declined. Claimant received one point for the

speeding violation, which placed him at three points in a 36-month rolling period. Mr. Lewis told claimant the safety committee would review his record and he could not drive the rest of the day, but he could work the remainder of the day as a sweeper. Claimant declined and said he would take vacation time until the decision was made.

On March 18, 2021, Mr. Lewis called claimant and informed him that his employment as a driver was terminated. He asked claimant to meet with him on March 19, 2021, to go complete some paperwork and return his uniforms. Claimant stated he would attend the meeting, but then decided he would not because he was already discharged. He did return his uniforms to employer but did not meet with Mr. Lewis.

At a union grievance meeting held on April 1, 2021, employer informed claimant it could discuss an open sweeper position with him, but the pay was significantly less than claimant earned as a driver, and claimant declined because he wished to work as a driver.

On March 23, 2021, employer ended claimant's employment for failing to return to work on March 19, 2021 for the meeting. It considered him a voluntary quit because he was No call/No show on March 19, 22 and 23, in violation of employer's three-day No call/No show policy. Claimant was not scheduled to work after March 17, 2021.

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.

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 employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to violate its driving safety policy by speeding after having been warned. Claimant's speed was entirely within his control, as was claimant's previous at-fault accident. Claimant's actions demonstrate a substantial disregard of claimant's duties and obligations as an employee. This is disqualifying misconduct and benefits are denied.

DECISION:

The April 23, 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.



Stephanie Adkisson
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July 27, 2021
Decision Dated and Mailed

sa/scn