

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUGLAS S HANSEN
Claimant

APPEAL NO. 14A-UI-02653-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QUEST LINER INC
Employer

OC: 02/02/14
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Douglas Hansen filed a timely appeal from the February 28, 2014, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on April 1, 2014. Mr. Hansen participated. Tim Yochum represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Douglas Hansen was employed by Quest Liner, Inc., as a full-time over-the-road truck driver from 2011 until February 4, 2014, when Tim Yochum, General Manager, discharged him from the employment. Larry Rochau, Operations Manager, carried out the discharge. Mr. Hansen's immediate supervisor was Fleet Manager/dispatcher Kyle Goodsman.

The final incident that triggered the discharge occurred on February 3, 2014, when Mr. Hansen was late making a delivery because he had elected to start his work day later than necessary to make the delivery on time and then elected to further delay delivery.

The employer considered several prior incidents in making the decision to end the employment. On January 20, 2014, Mr. Hansen caused a 50-gallon antifreeze spill when he failed to perform the required walk around the trailer before he pulled the trailer away from its resting spot. The trailer was still connected to the antifreeze line. On November 20, 2013, Mr. Hansen used his cell phone at a customer's facility in violation of the customer's cell phone policy. The customer had a sign posted that prohibited cell phone use. The purpose of the ban on cell phone use was to prevent ignition of flammable substances. Mr. Hansen was delivering a tank of alcohol, a flammable substance, to the facility. Mr. Hansen had hauled to the facility before. At the time Mr. Hansen used his cell phone, he was inside the cab of his truck. On September 12, 2013, when Mr. Hansen operated the employer's semi-tractor at a time when he was logged out of service. Federal D.O.T. regulations required that Mr. Hansen be logged in when operating the

employer's truck. Mr. Hansen engaged in similar conduct on May 23, 2013. On May 15, 2013, Mr. Hansen chose a driving route that caused him to be late in loading freight at customer's facility. Mr. Hansen had two additional service failures in 2012 that were based on being late to load and late to deliver. On April 6, 2013, Mr. Hansen hit a stationary object while operating the employer's truck and caused damage to a step and to a fender on the truck. On January 23, 2013, Mr. Hansen failed to assure that a recently washed tank was properly sealed before he started hauling it. The tap on the top of the trailer was ajar. Had Mr. Hansen performed the required pre-trip inspection of the trailer, he would have discovered the issue. On September 11, 2012, Mr. Hansen was using a spare truck to haul a corrosive product for the first time and forgot his employer-issued chemical suit in his truck. On February 2, 2012, Mr. Hansen collided with an object and caused damage to the employer's truck.

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.

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 is not necessarily 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record is sufficient to establish a pattern of carelessness and negligence indicating a willful disregard of the employer's interests in safe operation of the employer's equipment and timely service to customers. Each of the incidents referenced above resulted from a decision on the part of Mr. Hansen to delay service, to violate an established policy or regulation, to skip a necessary step in the performance of his duties, or to otherwise approach duties in a substandard manner.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Hansen was discharged for misconduct. Accordingly, Mr. Hansen is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The claims deputy's February 28, 2014, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs