

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ATIBA KOJO

Claimant

APPEAL NO: 15A-UI-03835-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT BEARDEN INC

Employer

OC: 03/08/15

Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 20, 2015, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 1, 2015. The claimant participated in the hearing. Marty Poucher, Director of Safety, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Robert Bearden from November 19, 2014 to February 16, 2015. He was discharged after receiving a speeding citation in Spring City, Tennessee, January 19, 2015.

The employer's policy on speeding states, "Any driver cited for exceeding the posted speed limit by 19 miles per hour or more in a commercial vehicle...will be dismissed from employment" (Employer's Exhibit Two). The claimant signed in acknowledgement and receipt of the policy October 7, 2014 (Employer's Exhibit One).

On January 19, 2015, the claimant was driving through Spring City, Tennessee, and was stopped and cited for traveling 66 miles per hour in a 40 mile per hour zone. The employer believes it learned of the ticket in January 2015 when the claimant sent it in with his paperwork for that trip. The claimant does not recall sending in the citation with the paperwork.

When the employer became aware of the ticket and the fact the claimant was driving 26 miles per hour over the speed limit it did not allow him to drive again and terminated his employment effective February 16, 2015. During the termination meeting the employer stated his belief the claimant's commercial driver's license would also be suspended and it did not want him out on the road when that occurred because he would not be allowed to continue driving at that point.

The employer also stated the claimant violated its speeding policy stating any ticket showing a driver exceeding the speed limit by 19 miles per hour would result in termination.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

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 proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the claimant violated the employer's speeding policy by exceeding the speed limit by more than 19 miles per hour when he drove 26 miles over the speed limit in Spring City,

Tennessee, he did not have any other violations during his employment with this employer. The claimant denies that he was going that fast and indicated he never saw a sign stating the speed limit was 40 miles per hour but did see one that said 50 miles per hour and the law enforcement officer could not tell him where the 40 mile per hour sign was located. The claimant also argues that he would not have been driving that fast in a residential area. Despite these defenses, the claimant did not return to Tennessee to fight his case as he did not have time to do so as he was only allowed two weeks to pay the ticket.

Because this situation was an isolated incident of misconduct, the administrative law judge must conclude the claimant's action are not disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The March 20, 2015, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css