IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

BRENTON P BULT
Claimant

CITY OF IOWA CITY
Employer

APPEAL NO: 07A-UI-05450-DWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/29/07 R: 03
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brenton P. Bult (claimant) appealed a representative's May 16, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Iowa City (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 2, 2007. The claimant participated in the hearing with his witness Jan Van Schoyck. Barbara Morck, Karen Jennings and Ron Logsden, the transit manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 20, 2006. The claimant worked as a part-time, extra-board bus driver. Morck was the supervisor who evaluated the claimant's job performance.

The first six months the claimant was a probationary employee. During the first six months, the claimant was late more than once and had two preventable accidents. On January 2, 2007, instead of discharging the claimant for failing to satisfactorily complete his probation, the employer extended his probation for another six months. On January 2, the employer told the claimant he could not be late anymore and he had to have a working knowledge of all the employer's rules.

In an early March 2007 evaluation, the employer did not notice any problems with the claimant's job performance. In addition to being friendly and helpful to riders, the employer also noted that the claimant had been learning the employer's rules.

On April 25, the employer received a complaint from a woman who had been on the bus the claimant drove. The woman informed the employer the bus was five minutes late and that while he was driving; the claimant appeared to be on a cell phone – pushing buttons.

On April 25, Logsden talked to the claimant about the complaint. The claimant remembered the woman who had complained to him when he was five minutes late at her bus pickup location. The claimant asked the employer to contact the woman to validate her complaint. The woman provided the phone number of a local store and not her personal phone number. As a result, the employer was unable to validate the complaint by talking to the woman. During the conversation, the employer understood the claimant sent text messages to others when he was stopped. Since the employer's rules indicate a driver must use both hands on the wheel when operating a bus, the employer concluded the claimant violated one of the employer's rules. The claimant, however, meant he sent text messages when he was at a designated stop and was not considered available to drive because he was at a designated stop or layover.

The April 25 meeting was the first time the employer talked to the claimant about using his cell phone while driving. Prior to April 25 another employee reported the claimant talked on a cell phone with a Blue-tooth headset while driving. The employer did not say anything to the claimant about this complaint because the employer could not substantiate this report. The employer ended the claimant's employment on April 25, 2007.

Neither the claimant nor another employee received any memos about cell phone usage while driving between July 20 and April 25, 2007. After April 25, the employer sent a memo to all drivers explaining that cell phone usage, including sending text messages while driving, violated the employer's policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

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(8).

The claimant knew or should have known his job was in jeopardy on January 2, 2007, when the employer extended his probation instead of discharging him. Although the employer received a complaint that the claimant used his cell phone while driving by using a Blue-tooth headset, the employer could not substantiate this complaint. As a result, the employer did not talk to the claimant about this report. On a March 9, 2007 evaluation, the employer does not note any problems with the claimant's job performance and indicates he is learning the employer's policies. Prior to April 25, the claimant's job was not in jeopardy if he satisfactorily completed his extended probation. As a result of an April 25 complaint the employer was unable to validate, the employer discharged the claimant because the employer concluded the claimant used his cell phone to text messages while he was on a bus route. Even though the employer did not clarify the issue about cell phone usage and sending text messages until after April 25, the claimant clearly understood the employer did not allow drivers to use a cell phone or text messages while driving, which included being stopped at a stop sign or light.

The employer ultimately discharged the claimant because the employer understood the claimant used his cell phone to text messages while on a bus route. The claimant, however, denied sending any text messages while driving on April 25. The claimant acknowledged he looked at messages he may have received or looked to find out who had called him, but denied texting any messages to anyone on April 25 while driving on a bus route. Although the employer presented information that questions the claimant's credibility, during the hearing the question of when the claimant sent any text messages was confusing until the claimant explained where and when he responded to calls and/or text messages he received while driving. A preponderance of the credible evidence indicates that while the claimant may not have sent any text messages while driving, he admitted looking at his cell phone to see who had called or sent him a text message. In accordance with the employer's policy, the claimant should not have even done this. While the claimant used poor judgment by looking at his cell phone while driving, the facts do not establish that he intentionally disregarded the employer's interests. Therefore, the claimant did not commit work-connected misconduct. As of April 29, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's May 16, 2007 decision (reference 01) is reversed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of April 29, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs