

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY SHORES**  
Claimant

**ELDER CORPORATION**  
Employer

**APPEAL 22A-UI-03525-JD-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/24/21**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On January 24, 2022, the claimant filed an appeal from the January 18, 2022, (reference 02) unemployment insurance decision that denied benefits based on a determination that the claimant was discharged from employment for job disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 11, 2022. Claimant, Jeremy Shores, participated and testified. Employer participated through Jodi Allan, Human Resources and Mike Shores, Field Coordinator. The administrative law judge took official notice of the administrative record.

**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 began working for employer on September 10, 2018. Claimant last worked as a full-time driver. Claimant was separated from employment on December 27, 2021, when was discharged from employment for violating a safety rule. Claimant was driving his truck at a job site and his truck collided with another piece of machinery causing substantial damage. The employer is still in the process of repairing the machines and expect the total amount of the damage to exceed \$20,000.00. The employer has a written safety policy that mandates that drivers do not eat or drink while driving company vehicles due to the likelihood that it will distract the driver and avert their concentration from driving and increase the potential for accidents. The claimant testified that he was reaching for his water bottle and that it slipped from his hand. The claimant attempted to reach for the bottle while his truck was in motion and he collided with the other machine. The claimant acknowledged that he made a mistake and that he should have stopped his vehicle before he attempted to retrieve his water bottle. The employer discharged the claimant for violating the employer's written safety protocol against distracted driving.

## 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:

Causes for disqualification.

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

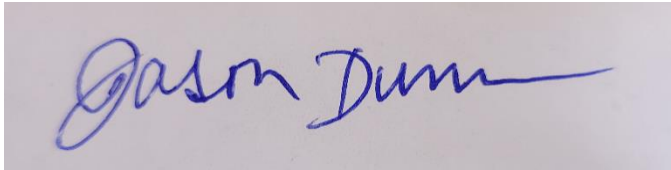
Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring its employees follow safety laws while operating a company vehicle. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of himself and his co-workers when he failed to stop his truck before he leaned over to retrieve his water bottle. The claimant's actions evinces a degree of carelessness and negligence that resulted in a substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Benefits are denied.

**DECISION:**

The January 18, 2022, (reference 02) 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.



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Jason Dunn  
Administrative Law Judge  
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March 28, 2022  
Decision Dated and Mailed

jd/jh