

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAYMOND M MAXWELL
Claimant

WEST SIDE TRANSPORT INC
Employer

APPEAL 20A-UI-00814-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/05/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 24, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2020. The claimant participated personally. The employer participated through Brandi Krewson, human resources assistant. Brett Pierce also participated. Employer Exhibits 1-2, and Claimant Exhibit A were admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as an over-the-road truck driver and was separated from employment on December 20, 2019, when he was discharged for excessive preventable accidents.

The claimant has been a truck driver since 1979 and began employment with this employer in 2011. He possesses a Class A CDL, which requires he also comply with certain Department of Transportation rules and regulations. He operated a 53 foot truck for the employer that weighed approximately 35,000-45,000 pounds.

Between 2011 and 2018, the claimant had five preventable accidents with the employer. The employer's definition of a preventable accident does not require the accident occur on a highway or "involve something major". Prior to discharge, the claimant had been issued a final warning on August 29, 2019 for having four preventable accidents in one year (Employer Exhibit 1). He signed the warning (Employer Exhibit 1). The claimant had an accident on February 21, 2019, when he struck a tankers' tires that were parked under his vehicle, and he did not see in the dark, when conducting his pre-trip inspection

(Employer Exhibit 2, Claimant testimony). He had a second accident on May 31, 2019 when he was backing in to unload and rubbed against an adjacent trailer, causing door brackets to break. He had a third accident on July 11, 2019, when pulling away from the dock, he struck another object and caused the brackets to break off the trailer. His fourth accident occurred in New Jersey when he struck a driver's side car door with his right front wheel.

The final accident occurred on December 19, 2019, when the claimant was operating an employer vehicle in a parking lot, "jumped a curb" and broke the bumper of the vehicle. There was no indication that the claimant's vehicle had faulty parts which contributed to the accident occurring. No evidence was presented that a medical episode contributed to the accident. He was subsequently discharged.

The claimant opined the accidents did not involve the highway or something major, and that he believed his diagnosis of type 2 diabetes contributed to the accidents. He did not provide any medical documentation to the employer at the time of employment or for the hearing, that his operation of the vehicles when accidents occurred was caused by the medical condition. Nor did the claimant visit a doctor after the accidents occurred. He routinely checked his blood sugar and took medication to control his diabetes while employed.

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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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 proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants

denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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). In this case, the claimant had ten preventable accidents during his employment, including five in less than a year. He had been issued a final warning in August 2019 after the fourth accident and knew or should have known his job was in jeopardy. While the claimant's accidents may not have involved the highway or injury to the motoring public, he repeatedly operated the employer vehicle in such a way that caused damage to it (the door brackets, the bumper, etc.) or damage to other vehicles. The claimant in this case was not discharged for a single incident or minor accident, but rather ten preventable accidents, including five within a year.

The administrative law judge is sympathetic to the diagnosis of diabetes, but no competent medical documentation was furnished to support the claimant's operation of the vehicle was related to his medical condition. Further, there was no evidence presented that the final accident of "jumping the curb" and breaking the bumper was due to a medical condition, inclement weather, another driver, or anything reasonably beyond the claimant's control.

Based on the evidence presented, the administrative law judge concludes the claimant's negligence or carelessness was of such a degree of reoccurrence so as to manifest culpability under the provisions of the Iowa Employment Security Law. The claimant's reoccurring negligence or carelessness was contrary to the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Act. The employer has established the claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The unemployment insurance decision dated January 24, 2020, (reference 01) 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.

Jennifer L. Beckman
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Decision Dated and Mailed

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