IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JOSEPH MILLER
Claimant

IES COMMERCIAL INC
Employer

APPEAL NO: 17A-UI-08426-JE-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/30/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 14, 2017, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 5, 2017. The claimant participated in the hearing. Dan Sherman, Line Division Manager; John Eckhardt, Project Manager/Estimator; and Jenny Rich, Human Resources Director; participated in the hearing on behalf of the employer.

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 mechanic III for IES Commercial from September 14, 1989 to July 25, 2017. He was discharged after he overloaded a trailer and a hitch broke.

On July 20, 2017, the claimant and two employees, at the direction of the claimant, loaded a trailer with three reels of wire. The reels weighed 4,175 pounds each and the trailer's weight limit, including the approximately 2,000 pounds the trailer weighed, is 12,200 pounds. The weight of the reels is listed on tags attached to the reels and the weight of the trailer is written on the tongue of the trailer. The claimant distributed one reel over the front of the trailer, one reel over the front axle of the trailer, and the final reel over the front and rear axle of the trailer. The claimant then drove the trailer to a field about seven miles away from where the trailer was loaded. As he drove down into a ditch to enter the field, the hitch broke and the claimant immediately notified Project Manager/Estimator John Eckhardt who sent the foremen to the site. The claimant took pictures of the way the trailer was loaded and the broken hitch. The employer completed an incident report and sent the pictures in at which time a discussion ensued among members of management and the decision was made to terminate the claimant's employment effective July 25, 2017.

The claimant received a 30 day suspension June 1, 2017, after he violated the employer's policies and DOT regulations May 30, 2017, by driving a combination vehicle requiring a

"Class A" commercial driver's license (CDL) when he held a "Class B" CDL. The superintendent, who oversees approximately 30 employees, directed the claimant to drive the combination vehicle and the claimant did not tell him he was not licensed to do so and was then caught driving without the proper license at a weigh station in South Dakota.

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, 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).
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).

The employer believes the claimant "showed poor judgment" July 20, 2017, in overloading the trailer which resulted in the hitch breaking. The claimant believed the reels weighed less than they actually did and he did not seem to take the weight of the trailer into consideration when loading it. He credibly denies that he improperly loaded the trailer causing the hitch to break however. While the trailer may have been overloaded, which contributed to the hitch breaking, there is no way to know what role the angle of the ditch and normal wear and tear on the hitch played in the hitch breaking.

With regard to the May 30, 2017 incident, the claimant should have informed the superintendent who assigned him to drive a combination truck that he did not have a "Class A" CDL. The claimant believed the employer knew he had a "Class B" CDL but acknowledges that because the superintendent was responsible for supervising several employees it was reasonable for the employer to expect him to notify it he did not have the proper license to drive that vehicle.

The employer is very safety conscious and trains employees extensively on safety matters. The claimant's actions May 30, 2017, were an isolated incident of poor judgment and his behavior July 20, 2017, was sloppy at best. While the employer was justified in terminating the claimant's employment due to its emphasis on safety, the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 14, 2017, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/scn