

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD E DEVANEY
Claimant

APPEAL 17A-UI-06568-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHUSTER GRAIN CO INC
Employer

**OC: 06/04/17
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 21, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his discharge for having too many accidents. The parties were properly notified of the hearing. A telephone hearing was held on July 17, 2017. The claimant participated and testified. The employer participated through Director of Safety and Compliance Keith Lamfers.

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 was employed full time as an over the road truck driver from November 6, 2014, until this employment ended on April 28, 2017, when he was discharged.

On April 15, 2017, claimant was involved in an accident which resulted in a fatality. Claimant was driving his truck on a highway and looked away from the road for a short second to grab his beverage. When claimant looked back up he saw a car traveling in front of him at a slow rate of speed. Claimant attempted a maneuver to avoid hitting the vehicle, but was unsuccessful. Claimant rear-ended the car, resulting in a fatality to the driver. Officers on the scene suspected the other driver had been intoxicated and was traveling significantly below the posted speed limit. The officers told claimant they did not believe the accident was his fault and he was not issued any citations. Claimant was notified via telephone on April 28, 2017, that his employment was terminated based on his involvement in this accident.

The employer's policies, located in the employee handbook, provide for a variety of disciplinary actions in the event of an avoidable accident. These actions include termination. The employer testified accidents of this kind could render a driver uninsurable under its policy, though it noted no such determination was made regarding claimant, as his employment was terminated.

Claimant had one prior incident where his truck ran out of fuel, but had never before been involved in an accident.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Claimant was discharged following a fatal accident. The accident occurred when claimant took his eyes off the road for a split second, causing him to rear-end another vehicle traveling well below the posted speed limit. Law enforcement at the scene concluded claimant was not at fault and declined to issue him any citation. The conduct for which claimant was discharged was merely an isolated incident. To the extent that claimant had never before been involved in an accident, the employer has only shown he was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability. Claimant was careless, but the carelessness does not indicate "such degree of recurrence as to manifest equal culpability, wrongful intent or evil design" such that it could accurately be called misconduct. Iowa Admin. Code r. 871-24.32(1)(a); *Greenwell v. Emp't Appeal Bd.*, No. 15-0154 (Iowa Ct. App. Mar. 23, 2016). Ordinary negligence is all that is proven here. Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 21, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs