

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMES F BARRATT
Claimant

APPEAL NO. 19A-UI-02740-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HORIZON EQUIPMENT
PUCK IMPLEMENT COMPANY**
Employer

**OC: 03/03/19
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Horizon Equipment (employer) appealed a representative's March 28, 2019, decision (reference 01) that concluded James Barratt (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 25, 2019. The claimant participated personally. The employer participated by Marcy Puck, Human Resources Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 7, 1989, as a full-time non-revenue service maintenance worker. He did not sign for receipt of the employer's handbook or the job duties for his position. The job duties said, "Acceptable driving record to be covered by company policy". It also indicated, "The Company reserves the right to revise or change job duties and responsibilities as the need arises." The claimant was convicted of a second offense of operating a vehicle while under the influence (OWI) in 2013. The employer accommodated his restricted duties from June 25, 2013, to June 14, 2018.

On March 22, 2017, the employer issued the claimant a written warning when the claimant charged his personal gasoline to the employer's account. On August 21, 2017, the employer verbally warned the claimant about his attendance and performance. On November 18, 2018, the employer gave the claimant a written warning for falsifying his time card, using his cellphone at work, and not completing his jobs. Each time the employer told the claimant he could be terminated from employment for further infractions.

On January 5, 2019, the claimant was charged with OWI. He was driving his personal vehicle during non-work hours. On January 6, 2019, the employer terminated the claimant. The claimant was still able to legally drive and had not asserted a plea. The employer thought the employer's insurance would not insure him but there was no communication from the insurance company to the employer. It also based the termination on all the claimant's previous incidents.

The claimant filed for unemployment insurance benefits with an effective date of March 3, 2019. The employer participated personally at the fact finding interview on March 27, 2019, by Marcy Puck.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Casper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The final event provided by the employer occurred on January 6, 2019. It did not happen on work time or on work property. At the time of the termination, the claimant had only been charged. He was covered by insurance and had a valid drivers' license. In these same circumstances in the past, the employer had accommodated the claimant's circumstances. The employer did not provide any evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 28, 2019, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs