

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSE A SEELINGER
Claimant

MONSON CONTRACTING LLC
Employer

APPEAL 20R-UI-12113-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Respondent (1)

Iowa Admin. Code r. 871-24.32(1)A – Discharge for Misconduct

STATEMENT OF THE CASE:

On July 30, 2020, Monson Contracting LLC (employer/appellant) filed an appeal from the July 22, 2020 (reference 01) unemployment insurance decision that allowed unemployment benefits based on a finding claimant was discharged with no showing of misconduct.

A telephone hearing was set for September 8, 2020 at 11:30 a.m. Employer did not register a number for the hearing. No hearing was held, and a default order was entered on September 9, 2020. Employer appealed to the Employment Appeal Board (EAB). The EAB remanded for a new hearing.

A telephone hearing was held on December 2, 2020. The parties were properly notified of the hearing. Employer participated by Stacy Cox. Jesse Seelinger (claimant/respondent) participated personally. Claimant's neighbor, Bruce Frieden, participated as a witness on his behalf.

Employer's Exhibits 1-4 were admitted. Official notice was taken of claimant's payment history on the unemployment insurance system.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time over the road truck driver. Claimant's first day of employment was April 5, 2018. The last day claimant worked on the job was April 7, 2020. Claimant was discharged at that time.

The most recent incident leading to discharge occurred on April 1, 2020. On that date, claimant was attempting to pass another vehicle when that vehicle moved toward his lane. In order to avoid being struck by the other vehicle, claimant drove off the road and into the ditch. This did not cause

any damage to the vehicle or injury to claimant. No police or accident report was issued as a result. The vehicle claimant was driving had to be pulled from the ditch, the cost of which was withheld from his paycheck. Another driver came to pick up the load claimant was driving to make sure it was delivered on time. Claimant immediately reported this incident to employer. He was given at least one other load after this incident and then routed back to employer's yard on April 7, 2020. He was discharged at that time.

Claimant was placed on probation on March 5, 2020. He was warned at that time that any future incidents would lead to discharge. Claimant was placed on probation following an accident in December 2019 in which claimant received a citation for rear-ending another vehicle. The probation was also due to DOT violations claimant received in February 2020 for an improper lane change and fatigued driving. Incidents of this nature are damaging to employer as it hurts its DOT rating, which in turn may result in loss of business and/or additional administrative work.

On the day claimant was discharged, employer received a complaint from one of claimant's neighbors regarding noise emanating from his truck. However, claimant had already been discharged at the time that complaint was made. As such, it played no role in the decision to discharge him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the July 22, 2020 (reference 01) unemployment insurance decision that allowed unemployment benefits based on a finding claimant was discharged with no showing of misconduct is AFFIRMED.

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

The administrative law judge finds the December 2019 accident and the February DOT violations were due to carelessness or negligence rather than the result of deliberate acts or omissions. As noted above, repeated instances of carelessness or negligence can constitute misconduct. However, the final incident leading to discharge was not due carelessness or negligence. Claimant intentionally drove into the ditch to avoid being struck by another vehicle. This was not necessarily unreasonable in the circumstances and was at best a good faith error in judgment.

The finding that this final incident was not misconduct is also supported by employer's actions following the incident. Employer allowed claimant to continue driving for approximately a week after this incident before discharging him, including allowing him to take at least one more load. It is incongruent for employer to argue that the final incident warranted discharge when it allowed claimant to continue performing work for it after this incident.

The administrative law judge understands why employer chose to discharge claimant. It was concerned by his prior incidents and had placed him on a probationary status as a result. There was then a final incident which it deemed a violation of that probationary status. However, this final incident does not constitute misconduct under Iowa law and, as such, claimant is not disqualified from benefits.

DECISION:

The July 22, 2020 (reference 01) unemployment insurance decision that allowed unemployment benefits based on a finding claimant was discharged with no showing of misconduct is **AFFIRMED**. Claimant's separation from employment was not disqualifying. Benefits are therefore allowed, provided he is otherwise eligible for benefits.



Andrew B. Duffelmeyer
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December 8, 2020
Decision Dated and Mailed

abd/scn