

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CODY J GENT
Claimant

APPEAL NO: 17A-UI-12562-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY TRACTOR CO INC
Employer

OC: 11/12/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated December 4, 2017, reference 02, which denied unemployment insurance benefits finding that the claimant was discharged from work on November 15, 2017 for failure to follow instructions in the performance of his job. After due notice was provided, a telephone hearing was held on December 27, 2017. Claimant participated. Employer participated by Mr. John Conrads, Part Owner/General Manager, and Mr. Mike Patterson, Service Manager.

ISSUE:

Whether the claimant was discharged for job-connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Cody Gent was employed by City Tractor Co., Inc. from May 22, 2017 until November 15, 2017, when he was discharged. Mr. Gent was employed as a full-time delivery driver and was paid by the hour. His immediate supervisors were Mike Patterson and John Conrads.

Mr. Gent was discharged on November 15, 2017 for failure to follow reasonable work-related directives that had been given to him by the company's general manager, Mr. Conrads. On Friday, November 10, 2017, Mr. Conrads, the General Manager, observed the claimant transporting a garden tractor on a company trailer. The General Manager noticed that the tractor appeared to be moving as it was being transported, and was concerned about whether Mr. Gent had properly secured the tractor on the trailer. When Mr. Conrads went to the trailer, he noted that the tractor had only one strap that had been placed from side to side, that the inadequate strapping was allowing the tractor to move as it was being transported. Although Mr. Gent repeatedly stated that he had "strapped it down", Mr. Conrads concluded that the tractor had not been properly strapped down because it had not been secured front and back to its locking motion while it was being transported.

The general manager also noted that the strap portion of the winch that was mounted to the trailer was damaged and the end hook was missing. When Mr. Gent was questioned on the condition of the front strap, the claimant responded that it had been torn, and must have torn off all the way. When the claimant was questioned why he had transported the tractor without ensuring that the front of the tractor was properly secured and why he had used a torn strap, Mr. Gent showed the general manager a strap in the truck that had been given to him by the company's service manager approximately one week before.

Mr. Conrads questioned the claimant about why he had not installed the new strap and referenced a recent meeting when the claimant had been reminded that he is responsible for vehicles that he is driving for the company. Mr. Conrads concluded giving the claimant a warning "this must be fixed before you use it again." Mr. Gent did not dispute or disagree with the directive.

Because Mr. Gent had previously been verbally warned on two occasions to properly strap equipment that he was hauling, and because the claimant had been given a written warning for failure to properly chain and strap equipment on November 9, 2017, Mr. Conrads was concerned about Mr. Gent's failure to follow instructions and safely transport equipment for the company.

The following Wednesday, November 15, 2017, the general manager decided to check to see if the claimant had properly secured a tractor that he was hauling that day, Mr. Conrads also wanted to verify whether he had replaced the strap and hook that had been provided. Mr. Conrads observed the claimant as he returned from picking up a tractor and saw that the strap and hook had not been replaced, and that the claimant was once again transporting a tractor that had not been properly secured allowing it to move on the trailer. When the claimant was asked whether he had replaced the winch strap, he simply acknowledged that it had not been replaced. When the claimant was discharged, he had no further comment or explanation except to express his disagreement with his discharge.

The claimant had been given a replacement strap to be installed on the winch by Mr. Patterson. Both the general manager and the service manager believed that the claimant could have easily installed the new strap on the winch, as the procedure only required the removal of one bolt and the procedure was simple. The employer reasoned that Mr. Gent could have easily replaced the strap because he did not indicate otherwise.

Mr. Conrads also concluded that a reasonable alternative was available to the claimant by using a different truck and trailer, but the claimant had elected to continue to use the trailer with the defective strap, contrary to the directive that had been given to him.

It is the claimant's position that he had not been given any specific training by the company on how to change a winch strap and that when he had informed his service manager that the winch strap was broken, he had been advised by Mr. Patterson to utilize two ratcheting straps as an alternative. Mr. Gent also asserts that because he had received no complaints from customers and had not lost any tractors while transporting them, there had been no safety violations.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes job-related misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does.

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 to prove the claimant was discharged for work connected misconduct as defined by the Iowa Employment Insurance Law. *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). 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). The law limits disqualifying misconduct to substantial willful wrongdoing or repeated carelessness or negligence that equals willful misconduct culpability.

In the case at hand, the evidence establishes that the claimant had been informed on more than one occasion that it was his responsibility to ensure the company equipment that was assigned to him was being operated safely. The evidence establishes that Mr. Gent had also been verbally warned on two occasions about his failure to properly strap down loads that were being transported by trailer, and that when he continued to violate the rule, a written warning was given to Mr. Gent on November 9, 2017. That warning specifically put the claimant on notice

that he had loaded equipment that had been unsecured or poorly secured and warned him that proper chaining and strapping was required and that further violations of safe hauling could result in his termination from his employment. Claimant was also warned to report any needed vehicle repairs and that he must follow directives given to him by the service manager or the company's general manager.

The evidence also establishes that Mr. Gent was given a final specific warning and work directive to make sure the defective strap was fixed before he used the trailer again. In spite of these warnings and directives, Mr. Gent elected once again to use the trailer with the torn winch strap and had not properly secured the tractor being hauled, instead availing himself of a reasonable alternative.

The claimant had the alternatives of using another pickup truck and trailer that were available at the time or properly strapping the load down front and rear as required using other straps. Mr. Gent did not inform Mr. Conrads of any factors that prevented him from following the directives.

Although the administrative law judge is aware that Mr. Gent received no specific training in changing the winch strap, and that he maintains that he did not have the technical expertise to do so, the administrative law judge finds the claimant's testimony to strain credibility. The winch strap is a lengthy fabric flat strap with a hook on one end and a loop at the other. The loop simply attaches to the winching handle by removing and then reinserting a single bolt and nut combination through the loop end of the strap and could have easily been accomplished. Mr. Gent had not previously informed either Mr. Patterson or Mr. Conrads of his inability to perform the simple task. The claimant's failure to follow the reasonable and work-related directive showed a willful disregard for the employer's interests and the standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa Employment Security Law. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible.

DECISION:

The representative's decision dated December 4, 2017, reference 02, is affirmed. Claimant was discharged for work-connected misconduct. Unemployment insurance benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn/rvs