

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAILA D BUMGARNER
Claimant

JENSEN TRANSPORT INC
Employer

APPEAL 17A-UI-05683-SC-T

**ADMINISTRATIVE LAW JUDGE
AMENDED DECISION**

**OC: 05/07/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Kaila D. Bumgarner (claimant) filed an appeal from the May 25, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Jensen Transport, Inc. (employer) discharged her for unsatisfactory job performance when she had the ability to perform to the employer's standards. The parties were properly notified about the hearing. A telephone hearing was held on June 22, 2017. The claimant participated. The employer participated through Director of Operations Tim Jensen, Temporary Dispatcher Paul Koohy, Account Specialist Jodi Zieser, and Fleet Manager Brittini Gipper. The employer was represented by Attorney Bradley M. Beaman. Claimant's Exhibits A through D were received. Employer's Exhibits 1 through 5 were received.

This amended decision corrects the error in the last sentence of the second full paragraph on the third page, which stated, "Accordingly, benefits are allowed." To make the sentence consistent with the decision that the claimant is denied benefits based on her separation from the employer, the sentence has been amended to state, "Accordingly, benefits are denied." It does not make any substantive revisions to the decision issued on June 26, 2017.

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: The claimant was employed full-time as an Office Associate beginning on February 27, 2017, and her last day worked was May 5, 2017. The claimant reported directly to Director of Operations Tim Jensen.

The employer was hiring an office associate to provide coverage for the employees who completed payroll and performed dispatching duties when they were not in the office. The position was necessary because Dispatcher Ted Ogden had informed the employer he only had a half-day off during his two-year tenure and, if an employee could not cover his job duties in his absence, he would quit his position. During the interview with the claimant, Jensen asked the

claimant about her dispatch history and explained that covering for the regular dispatcher would be a required part of the job.

The claimant accepted the position and began working on February 27, 2017. She received training in payroll and provided coverage for Account Specialist Jodi Zieser when she had to be out of the office. The claimant began training for the dispatch position. On April 21, 2017, she had a discussion with Jensen about the overnight phone duties of the dispatcher and how she would be compensated. Jensen sent the claimant an email explaining she could receive the phone calls directly and be compensated in two-hour increments or he would take the phone calls and contact her only when necessary. The claimant did not immediately respond to Jensen's email.

On April 27, 2017, Jensen addressed service manager Tom Sutton, who is also a friend of the claimant's husband, about an issue that had occurred the night before. Jensen was yelling at Sutton in the office area with other employees present. Sutton quit his employment the following day. This was not the first time the claimant had heard Jensen raise his voice. The president of the company is also Jensen's father and they would occasionally argue. The claimant had also heard Ogden and Jensen yelling to each other across the office as part of their work-related communications.

On May 1, 2017, the claimant responded to Jensen's email from April 21. She refused to accept the dispatcher job duties. She did not believe the training was adequate, was concerned if she made a mistake then Jensen would talk to her the way he talked to Sutton, did not want truck drivers to have her personal cell phone number, and stated that any overnight phone calls would wake her husband.

On May 3, 2017, Jensen and the claimant met to discuss her email. The claimant again refused to do the dispatch duties as she did not want to put herself in a position where Jensen might talk to her unprofessionally. Jensen told the claimant if she was unwilling to cover dispatch then he would have to hire someone else for her job. The claimant again refused and Jensen told her that she was done. They agreed she could remain employed for an additional two weeks while she looked for another job. However, due to attendance issues, the claimant's last day worked was May 5, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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 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 the 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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer had an interest in hiring an employee to perform the dispatch duties when Ogden was not available. The claimant knew of the employer's interest when she accepted the job. The claimant refused to perform the substitute dispatch job functions. She was warned refusal to do so would result in her discharge. The claimant's contention that Jensen's conduct towards other employees and her fear that he would speak to her the same way does not constitute reasonable grounds for the claimant's refusal to perform the job duties for which she was hired. The claimant was willing to remain employed and report to Jensen, she just did not want to perform the dispatch functions. The employer has presented substantial and credible evidence that the claimant was acting against its best interests and was insubordinate by refusing to perform her job duties. Accordingly, benefits are denied.

DECISION:

The May 25, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn