

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICKLAS J MEYER
Claimant

MEYER LOGISTICS
Employer

APPEAL 17R-UI-00774-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/18/16
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 27, 2016, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 16, 2017. Claimant participated. Employer participated through Becky Fleck, Human Resources Coordinator. Employer's Exhibits 1 through 6 were entered and received into the record. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a truck driver beginning on September 19, 2016 through October 3, 2016, when he was discharged. The claimant did not get along with Derrick, who was the employee assigned to supervise and train him. The claimant had distinct ideas about how the employer should go about training him. He did not agree with the decisions made by the employer as to how he was to be trained or which routes or equipment he should be trained to operate. During the entire fifteen day period he was employed, he never completed one route that was assigned to him.

The claimant made complaints about Derrick which were being investigated by the employer. At least two members of management had spoken with the claimant about the need for him to follow the chain of command and to follow his direct supervisor's instructions. These occurred when the claimant failed to arrive for work on September 23 at 6:30 and instead came later with other employees. The other instance occurred on September 27 when the claimant went over his supervisor's head to talk to another manager because he did not think he needed to drive the particular truck he was being assigned to drive.

On October 3, the claimant was assigned to ride with Derrick. He chose not to go on the route because he did not think that they would return in time for him to get to a follow-up doctor's

appointment he had previously scheduled for that day. The claimant had not previously told the employer that he had a doctor's appointment that day. When the claimant refused to go on the route he was assigned, he was discharged for failure to perform his assigned tasks. While the employer had spoken to the claimant previously, he had not been given any final warning that he needed to change his behavior in order to preserve his employment.

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 § 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.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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, employer incurs potential liability for unemployment insurance benefits related to that separation.

The claimant was a difficult employee in his short fifteen days of employment. While the managers tried to counsel him, they did not make it clear to the claimant during his verbal warnings that continued failure to follow instructions would lead to his discharge. Under these circumstances the employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Benefits are allowed.

DECISION:

The October 27, 2016 (reference 03) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Since this employment does not fall within the claimant’s base period, this employer is not liable for benefits paid during this claim year.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs