

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELLE A TIMM

Claimant

CJ TRANSPORT LLC

Employer

APPEAL NO. 17A-UI-13103-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/19/17

Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated December 14, 2017, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 2, 2018. Claimant participated personally. Employer participated by Susan Pewe. Claimant's Exhibits A-D and Employer's Exhibits 1-13 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on November 12, 2017. Employer discharged claimant on November 13, 2017, because claimant received an OWI for driving under the influence of a variety of drugs when she was involved in an accident while driving a semi-trailer for employer on October 20, 2017.

After the accident, claimant stated that she received a breathalyzer test from a DOT official who then left the scene. Claimant stated that she was taken to a police station, and although she did fine on all tests, was handcuffed and told that she would be arrested unless she dropped a UA. The police report indicates that claimant failed a field sobriety test and then a drug recognition expert found her to be impaired. Claimant then was asked to drop a UA, and the UA came up positive for a number of drugs of impairment.

Claimant stated that she takes a variety of prescribed over-the-counter medications. She stated that she's taken them for a number of years (except a period in 2016 when she filled out a DOT document indicating that she took no prescription drugs). The drugs she takes caused her to test positive for amphetamines, hydrocodone and hydromorphone after the accident. Claimant did not indicate to employer or DOT that she was taking numerous prescription drugs and did not produce testimony from a doctor or a note allowing claimant to drive while on the variety of medications.

When employer received the notification that claimant had tested positive for a variety of controlled drugs, it immediately terminated claimant's employment.

At her time of hire, claimant signed for and received documents from employer indicating employers and the state's rules for working as a commercial truck driver while under the influence of drugs. Claimant stated that she understood these regulations, but believed that since the drugs she was taking were prescribed to her, that she should not have lost her job.

REASONING AND CONCLUSIONS OF LAW:

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(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, claimant's testimony regarding both the series of events regarding the accident and its aftermath and her testimony regarding the lack of receipt of documents she appears to have signed for regarding drug use and driving produced by the state and employer. Claimant's statement regarding the accident itself do not ring true logically. Claimant admitted and the police report showed that claimant was following a car that was stopped at a four way stop sign. The police report stated that claimant hit the back of the stopped car, pushing it into the intersection. Claimant stated that the car had stopped then moved into the intersection, then for some unknown reason, had stopped again in the middle of the intersection where claimant hit it. As this is a four way stop and claimant was driving a semi-trailer, it makes little sense that claimant could have been at a stop behind another car, that other car moved forward into the intersection, claimant then came to another stop as she came upon the stoplight, and then claimant moved forward to run into the vehicle that had surprisingly stopped again in the intersection. The time for a semi to move forward from its second spot up to the stop sign, stop again, and then move into the intersection would have necessarily given claimant enough time to see the stopped car in front of her in the intersection and not moved into the vehicle had she been paying attention.

Additionally, the administrative law judge notes the similarity of the signatures of a DOT document claimant admits to have signed to the document she denies having signed and notes that employer's witness testified that she was personally present when claimant signed the documents at time of hire. Claimant also admitted knowing and understanding the information within the documents.

The claimant argues first that the DOT chose to do nothing in this case, so she shouldn't have been terminated. This argument misses the point that claimant knew or should have known that she was not to be operating a commercial vehicle (or any vehicle for that matter) under the influence of intoxicating drugs. This is stated in both DOT regulations and in employer's documentation. According to procedures, claimant was to have documentation from her doctor stating that the doctor believed it was safe for claimant to operate a commercial vehicle while taking multiple controlled substances. This statement was not provided.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. Here, claimant was operating a commercial vehicle in a state that multiple police officers observed as under the influence of drugs. Claimant failed a field sobriety test and when her urine was tested, claimant was found to have amphetamines, hydrocodone and hydromorphone in her system while operating a commercial vehicle. In instances such as this, employer has appropriately terminated claimant without warning.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning operating a vehicle while under the influence of controlled substances.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew or should have known she was not to be operating the semi-trailer while under the influence of controlled substances. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated December 14, 2017, reference 02, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn