

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PEGGY K CHEZUM
Claimant

DURHAM D & M LLC
Employer

APPEAL 15A-UI-13324-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Peggy Chezum (claimant) filed an appeal from the December 01, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Durham D & M, LLC (employer) discharged her for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on December 23, 2015. The claimant participated on her own behalf. The employer did not participate.

Notice of the hearing mailed to the parties on December 08, 2015 establishing the hearing date and time for December 23, 2015 at 1:00 p.m. The employer's representative Talx UCM Services received notice of the hearing and notified its client. The client identified Scott Miller as the contact person for Talx Hearing Representative Barb Toney. She left a message for Miller on December 17, 2015, but did not receive a call back. She left another message for him on December 22, 2015, but did not receive a call back. Toney then contacted the main line for Miller's location and learned the employer was closed until January 4, 2016. Toney made a request to postpone the hearing on the morning of December 23, 2015.

ISSUES:

Should the employer's request to postpone the hearing be granted?

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 part time beginning on August 20, 2015. She trained for and became a bus driver on for the 2015 fall semester. She was separated from employment on November 05, 2015, when she was discharged. As part of her training, the claimant was told when stopping at a bus stop, to turn on her hazards 200 feet before the stop and then activate the "reds" during the stop. By activating the reds, the claimant was turning on the red blinking lights on the bus as well as putting out the stop sign to halt traffic.

On October 01, 2015, the claimant was assigned to work on a bus route that included picking up 54 children from a mobile home park. She would wait seven to ten minutes for all of the children to arrive. On October 28, 2015, the claimant turned off her reds while waiting for the children so that the traffic into and out of the trailer park could continue. Someone called the employer and reported the claimant's conduct to the safety person, Kayla Miller. Miller investigated the incident and discharged the claimant for her conduct on October 28, 2015.

REASONING AND CONCLUSIONS OF LAW:

Postponement

For the reasons that follow, the administrative law judge denies the employer's request for a continuance.

Iowa Admin. Code r. 871-26.8(2) provides:

(2) A hearing may be postponed by the presiding officer for good cause, either upon the presiding officer's own motion or upon the request of any party in interest. A party's request for postponement may be in writing or oral, provided the oral request is tape-recorded by the presiding officer, and is made not less than three days prior to the scheduled hearing. A party shall not be granted more than one postponement except in the case of an extreme emergency.

The employer requested the postponement the morning of the hearing. It had sufficient notice of the hearing and was only unable to participate due to a breakdown in communication between the employer's representative and its witness. This is not good cause for the delay in requesting the postponement and the postponement is denied.

Discharge

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 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 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (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).

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring employees follow safety laws while operating a company vehicle.

The claimant acknowledged she did not properly use the safety mechanisms or "reds" put in place to protect children getting on and off a bus. She knew this was a procedure to follow as she had been working on this route and properly using the safety equipment for most of the month of October. The claimant was acting against the best interests of the employer and the safety of the general public when she failed to properly use the safety equipment in place. This is misconduct without prior warning or specific policy violation. Accordingly, benefits are denied.

DECISION:

The December 01, 2015, (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/css