

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASMAN ROBERSON
Claimant

SCHUSTER CO
Employer

APPEAL 21A-UI-19231-JD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/11/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On August 31, 2021, Jasman Roberson, claimant, filed an appeal from the August 27, 2021, (reference 01), unemployment insurance decision that denied benefits based upon the determination that his employer, Schuster Company, employer, discharged him for violating a known company rule. The parties were properly notified about the hearing held by telephone on October 19, 2021. The claimant, Jasman Roberson, participated and testified. The employer, Schuster Company, participated through Safety Director, Krystin Sitzman. No exhibits were offered or admitted. Official notice was taken of the administrative record.

ISSUE:

Did the employer discharge the claimant for job related misconduct sufficient to warrant a denial of unemployment benefits?

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 over-the-road (OTC) truck driver beginning on November 18, 2020, and was separated from employment on July 16, 2021, when he was discharged for not having the proper seal for one of his cargo loads which lead to that cargo load being refused by one of the employer's customers. The claimant was not provided any seals when he picked up the load and he did not have any extra seals in his truck. The seals are an additional safety protocol that is required for hauling food related items. The claimant indicated his load was secured with a padlock but not the additional seal and he was informed during his exit interview that he could have purchased the required seals at any truck stop.

The employer cited a list of other infractions committed by the claimant that supported their decision to discharge him but they were neither recent nor relevant to the final act.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed provided he is otherwise eligible.

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 provides in relevant part:

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.

(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.

This definition of misconduct 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 Dept 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 Dept 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 Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dept Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14(1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The employer’s burden in proving job disqualifying misconduct is not met by merely appearing at an unemployment hearing and offering only controverted hearsay testimony. In this case the employer failed to provide the fact finder with any direct evidence to support their position. The claimant was discharged for not ensuring that one of his cargo loads was sealed properly. He was out of the required seals and was not given any when he picked up this particular cargo load. He was informed after the load was refused that he could purchase the necessary seals at any truck stop. The employer failed to provide any evidence that the claimant was properly trained on the importance of properly sealing loads nor any evidence of the claimant’s disciplinary history including the final act that led to their decision to discharge him.

The employer has not met its burden in proving disqualifying job related misconduct. Benefits are allowed provided he is otherwise eligible.

DECISION:

The August 27, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Jason Dunn
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

October 27, 2021
Decision Dated and Mailed

jd/ol