

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARK A STIEVENART**  
Claimant

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**APPEAL 16A-UI-13861-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/04/16**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 20, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A first hearing was scheduled on January 23, 2017, but was postponed due to a family emergency for the employer witness. A second telephone hearing was scheduled and held on January 30, 2017. The claimant participated personally. The employer participated through Lea Peters, Human Resources Generalist. The claimant's appeal statement was admitted as Claimant's Exhibit A. Two CD's furnished by the claimant were received as the Claimant's Exhibit B.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 over-the-road truck driver, beginning in 2009 and was separated from employment on November 18, 2016, when he was discharged.

The employer revised its driver manual and procedures in 2016, and notified all employees that they were expected to review the new manual and sign an acknowledgment of the manual. Copies of the manual were placed in terminals throughout the country, and drivers had access to the manual online. The employer sent out electronic messages via Qualcomm in July 2016 alerting drivers to the new manual and need to review. The claimant worked all but 8 days in July but denied receiving the message. The claimant acknowledged he became aware of the new handbook and acknowledgement to be signed when his fleet manager called him in

October. The claimant was off work for 9 days throughout October but did not attempt to obtain a copy to review or sign the requested acknowledgment. Then in a November 4, 2016 phone conversation (Claimant Exhibit B), the claimant and his fleet manager had a conversation about the manual and the claimant's need to review it and sign the acknowledgment, as the other employees in the company have done so over the past few months. In the call, the claimant declares that he will sign it after two weeks of vacation in December and his fleet manager reaffirms that the claimant must sign the new acknowledgment or be discharged. The claimant made no efforts to obtain the manual or meet with the employer to discuss how the contents of the manual or the impact of signing the acknowledgment if the claimant had outstanding issues to resolve. The claimant had been in contact with the employer's human resources department about an unrelated back pay issue, but did not request assistance in reviewing, or clarification on the manual. In a final meeting on November 18, 2016, the claimant was routed to the Phoenix terminal and confronted by the terminal manager and his fleet manager. He was again presented the manual and acknowledgment to sign and he refused. Upon returning his truck as he prepared for vacation, he was informed he had been discharged.

The claimant asserted he did not sign the acknowledgment because he did not understand the document. The claimant did not trust his fleet manager, Heath, but did get along with the terminal manager. He did not request assistance in interpreting or reading the document from either. The claimant lives with his significant other whom he also provides care to following her motorcycle accident in 2010. While home in October, he did not request her assistance in reviewing the manual because he was busy tending to chores and other issues.

#### **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.

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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

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. 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

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 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. *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. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the employer revised its employee manual and in July 2016, notified all employees that the manual had been revised, needed to be reviewed and an acknowledgment needed to be signed. Employees could access the manual at driver terminals or online. The claimant denied getting the July message until October. The claimant made no efforts to obtain or review the manual in October. On November 4, 2016, the employer spoke with the claimant and explained he must review the manual and sign the acknowledgment to retain employment. The claimant stated he would not sign it until he understood the document. He declared that he

would sign the acknowledgment after his December vacation. After the call, until he was routed to Phoenix on November 18, 2016, the claimant made no efforts to obtain, read or understand the manual. He again was presented the manual and acknowledgment and refused to sign before being subsequently discharged.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The administrative law judge is persuaded that an employer has the right to communicate its expectations to employees, whether it be through formal discipline or feedback or updating its policies and requesting employees acknowledge they have reviewed them. In this case, the employer notified employees in July 2016, that a new manual was available for review and a signed receipt was needed by each employee. Even if the claimant did not receive the initial message, he acknowledged he became aware of the new manual in October.

Between October and November 18, 2016, the evidence presented does not support that the claimant made any good faith efforts to obtain or review the manual, to meet the employer's requirement for continued employment. In light of ongoing discussions regarding an unrelated back pay issue with human resources, the claimant did not request any assistance in reading or interpreting the manual, nor did he seek assistance from his fleet manager or terminal manager. The administrative law judge recognizes the importance of understanding a document before signing it, but the credible evidence presented is that the claimant knew his job was in jeopardy (especially based on the November 4 call) and had a reasonable period to make efforts to have someone in his personal or professional life review the document with him. The claimant failed to present persuasive evidence to mitigate his failure to comply with the employer's request. The claimant knew or should have known his refusal to review and sign the handbook was contrary to the reasonable expectations of the employer and could result in discharge. The employer has established the claimant was discharged for reasons that would constitute misconduct. Benefits are denied.

#### **DECISION:**

The December 20, 2016, (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/rvs