

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT J CEJKA
Claimant

NEW COOPERATIVE INC
Employer

APPEAL 18A-UI-00421-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/03/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 5, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 2, 2018. The claimant participated and testified. The employer participated through attorney Stuart Cochran and witnesses Lynn Dryer and Jay Newton. Justin Reiter was also present on behalf of the employer, but did not testify. Employer's Exhibits 1 and 2 were received into evidence.

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: Claimant was employed as a truck driver. Claimant initially began working for the employer on a part-time basis on February 27, 2017, but was made a full-time employee on August 13, 2017. Claimant worked as a full-time truck driver until he was discharged from employment on November 30, 2017.

The claimant was charged with operating while intoxicated (OWI) while driving on November 29, 2017. The incident did not occur on work time. Claimant was slated to lose his driver's license ten days later. Claimant informed Newton of his arrest and upcoming license suspension on November 29. Newton then contacted Dryer regarding the situation. Having a valid commercial driver's license (CDL) is a requirement of claimant's job. (Exhibit 1). Dryer testified that drivers without a valid license cannot be insured through the employer's insurance carrier. Claimant understood this and that his actions on November 29, 2017, may put his job in jeopardy. Dryer and Newton both testified, as there were no positions available that did not require a CDL, the decision was made to discharge claimant from employment.

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 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).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Repeated traffic violations rendering

a claimant uninsurable can constitute job misconduct even if the traffic citations were received on the claimant's own time and in his own vehicle. *Cook v. IDJS*, 299 N.W.2d 698 (Iowa 1980).

Claimant was aware that he was required to maintain a valid CDL in order to remain employed. Claimant further admitted he knew his actions on November 29, 2017 could put his job in jeopardy. The claimant lost his driver's license because he tested over the legal limit for operating a motor vehicle. A valid driver's license was a substantive requirement of the claimant's job duties as a truck driver, as well as being required by the employer's insurance carrier. The employer is not obligated to accommodate the claimant during license suspension period. The claimant was discharged because his actions on November 29, 2017 left him no longer able to meet the job requirements due to the OWI.

The employer is not obligated to accommodate an employee during a license suspension or revocation period, but does have a legal obligation to abide by state and federal transportation safety statutes and regulations, and not allow unlicensed individuals to drive. Based on the evidence presented, the administrative law judge concludes the claimant's failure to maintain a valid, unrestricted driver's license as a known condition of the employment was misconduct sufficient to warrant a denial of benefits. Benefits are denied.

DECISION:

The January 5, 2018, (reference 01) 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs