

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LESLIE J JACKSON
Claimant

APPEAL NO. 09A-UI-06158-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

**Original Claim: 03/22/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 13, 2009, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 18, 2009. The claimant participated personally. The employer participated by Sandy Loney, Director of Human Resources, and Michael Erritt, Reefer Van Operation Supervisor, and was represented by Drew Gentsch. Exhibits 1 through 14 were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: The claimant last worked for employer on January 31, 2008. He was an over-the-road driver for Decker. Mr. Jackson received Decker's policies concerning on-time delivery and compliance with federal safety standards. Mr. Jackson started work on July 25, 2007. He had ten incidents that the employer considered in his termination from July 25, 2007 through January 30, 2008. The last incident was a late delivery on January 30, 2008. The incident report, Exhibit 2, indicated the claimant was confused as to how he was to calculate load miles. The information provided to him about the distance he was to travel was from where he picked up his load. The claimant assumed that the number of miles was from his home, where he had permission to leave from for that load.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

871 IAC 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.

The gravity of the incident, number of policy violations, and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence

or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

This error by the claimant appears to be a good-faith error in judgment. His assumption about mileage was wrong, but not misconduct. He had been warned about late deliveries in the past. Dexter had legitimate concerns about on-time delivery, accidents, and unauthorized travel the claimant had during his tenure with Dexter. Those issues could affect the employer's business. The decision to terminate an employee for cause or without cause is not dispositive as to eligibility for unemployment. To be disqualified for unemployment, a claimant must commit a last act of misconduct. The incident on January 30, 2008 was not misconduct. There was no last act. The misunderstanding about the routing and the amount of time the claimant needed to take to make an on-time delivery on January 30, 2008 did not amount to a deliberate disregard of the employer's interest so as to constitute misconduct. The last incident, which brought about the discharge, fails to constitute misconduct because it was a reasonable misunderstanding as to how long the trip was going to take.

DECISION:

The representative's decision dated April 13, 2009, reference 01, is reversed. The claimant is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw