

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS R DUTTWEILER
Claimant

APPEAL 19A-UI-10138-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BURLINGTON STAGE LINES LTD
Employer

**OC: 11/17/19
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On December 22, 2019, Nicholas Duttweiler (claimant) filed an appeal from the December 12, 2019 (reference 01) unemployment insurance decision that found he was not eligible for benefits.

A telephone hearing was held on January 8, 2020. The parties were properly notified of the hearing. The claimant participated personally. Burlington Stage Lines LTD (employer) participated by Human Resource Director Caylie Cherry and Dispatch Supervisor Brent Spiker.

ISSUE:

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as full-time dispatch security. Claimant's first day of employment was May 31, 2013. The last day claimant worked on the job was November 21, 2019. Claimant's immediate supervisor was Spiker. Claimant worked the third shift, which was an eight-hour, overnight shift. Claimant separated from employment on November 21, 2019. Claimant was discharged on that date.

Claimant was discharged due to repeated instances of poor performance. The most recent incident occurred on November 21, 2019. One of claimant's job duties was to ensure that drivers came to work as scheduled. Claimant knew that if a driver did not come to work as scheduled, it was his duty to call the driver within approximately ten minutes of their scheduled start time. On that date, a driver was scheduled to come in at 3:30 a.m. However, claimant did not notice the driver had not come in and did not call the driver until approximately 5:40 a.m. This resulted in the driver coming in approximately three hours late, which caused a charter group to miss an important event and employer having to reimburse the group. Spiker conducted an investigation of this incident, including reviewing video, and determined claimant had also dozed off several times during this shift. Sleeping during a shift was not allowed.

Claimant had been disciplined for previous similar instances of poor performance and sleeping on the job. Claimant received a write-up on November 19, 2019 for similar occurrences on November 5, 6, 11, and 16. This included failing to complete assigned duties and nodding off while working. The write-up warned claimant that he needed to improve immediately and that further discipline could result in termination.

Claimant was similarly disciplined on September 17, 2019, for not completing work and dozing off during his shift. On June 10, 2019, claimant was suspended for one day for not completing work, including again failing to call a driver when the driver did not show up for work. That resulted in a bus being over an hour late. Claimant had received retraining on his duties and given a work duty checklist on April 27, 2019.

Claimant on some occasions had to complete or review some work from prior shifts as well, and would inform his supervisor when that was the case. However, others were generally able to complete the work claimant was assigned during an eight-hour shift in approximately four hours.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 12, 2019 (reference 01) unemployment insurance decision that found claimant was not eligible for benefits is AFFIRMED.

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 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.

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Claimant's conduct here was not intentional or volitional but was instead negligent. The issue then is whether the employer has proven that the claimant's actions amounted to "carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent, or evil design, or to show an intentional disregard of the employer's interests or of the employee's duties and obligations to the employer."

The administrative law judge finds employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). The claimant's sleeping while on duty and his failure to call drivers as required - after multiple prior warnings for the same conduct - shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Even assuming for purposes of analysis that claimant's failure to complete other job duties should be excused because he did not have enough time to complete those tasks during his shift, this administrative law judge would still conclude claimant's repeated poor performance constituted substantial job-related misconduct.

DECISION:

The December 12, 2019 (reference 01) unemployment insurance decision is AFFIRMED. Claimant is not eligible for benefits until he earns wages for insured work equal to ten times his weekly unemployment benefit amount and meets all other eligibility requirements.

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

Decision Dated and Mailed

abd/scn