

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON J SHOVER
Claimant

DESERT READY MIX
Employer

APPEAL 20A-UI-10442-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/05/20
Claimant: Respondent (1)**

Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On August 25, 2020, Desert Ready Mix (employer/appellant) filed an appeal from the August 19, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on April 1, 2020 for unsatisfactory work not constituting misconduct.

A telephone hearing was held on October 13, 2020. The parties were properly notified of the hearing. Employer participated by Concrete Manager Joseph Nazeck. Jason Shover (claimant/respondent) did not register a number for the hearing and did not participate.

Employer's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Was the claimant overpaid benefits? Should claimant repay benefits or should employer be charged due to employer participation in fact finding?
- III. Is the claimant eligible for Federal Pandemic Unemployment Compensation?

FINDINGS OF FACT:

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

Claimant worked for employer as a full-time driver. Claimant's first day of employment was November 25, 2019. The last day claimant worked on the job was March 19, 2020. Claimant's immediate supervisor was Nazeck. Claimant separated from employment on April 1, 2020. Claimant was discharged on that date.

Claimant was discharged due to an accident he was in while working on March 19, 2020. More specifically, claimant was discharged because a police report determined the accident was claimant's fault. The police report determined claimant had left the roadway and then

overcorrected, causing the truck he was driving to rollover. There was no indication the accident was caused by road conditions or by any mechanical issue with the truck. Claimant was cited for failing to maintain proper lane.

Claimant later indicated he may have been distracted by working with a tablet on the truck. He also suggested it may have been caused by the road being bumpy or unlevel. Employer does not have specific policies prohibiting tablet use while driving. However, employer's training program stresses the dangers of distracted driving, regardless of what the distraction may be. Claimant had not been disciplined for any similar incidents prior to being discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the August 19, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on April 1, 2020 for unsatisfactory work not constituting misconduct is AFFIRMED.

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

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.*

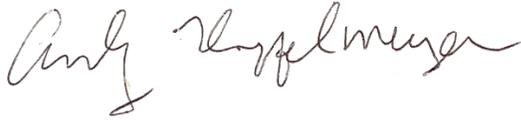
When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific 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).

Employer has not 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 circumstances here are more akin to an inadvertency, ordinary negligence in an isolated instance, or a good faith error in judgment or discretion than to a deliberate act of omission constituting a material breach of the duties arising out of the worker's contract of employment. While carelessness or negligence can constitute misconduct, it must be such a degree or recurrence as to manifest a willful or wanton disregard of the employer's interests. The administrative law judge finds this single instance of what may have been distracted driving does not rise to that level. Benefits are therefore allowed.

DECISION:

The August 19, 2020 (reference 02) unemployment insurance decision that allowed benefits based on a finding claimant was dismissed on April 1, 2020 for unsatisfactory work not constituting misconduct is AFFIRMED. Benefits are allowed, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
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October 16, 2020
Decision Dated and Mailed

abd/scn