

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOSHUA W SEARS
Claimant

GATR OF CEDAR RAPIDS INC
Employer

APPEAL 18A-UI-06127-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/24/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Joshua W. Sears (claimant) filed an appeal from the May 25, 2018, reference 06, unemployment insurance decision that denied benefits based upon the determination Gatr of Cedar Rapids, Inc. (employer) discharged him for violation of a known company policy. The parties were properly notified about the hearing. A telephone hearing was held on June 21, 2018. The claimant participated. The employer participated through HR Director Kelly Kern, Parts and Service Manager Tyler Jordan, and General Manager Curtis Patrick. No exhibits were offered into the record as the employer did not properly submit its proposed exhibits to the Appeals Bureau and the other party. The claimant objected to the request to postpone the hearing and the request was denied.

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 a Parts Counter Sales associate beginning on October 23, 2017, and was separated from employment on May 10, 2018, when he was discharged. The claimant was hired for sales; however, he would occasionally be assigned to a delivery route when the employer was short-handed. The employer has a commitment to safe driving policy which states all employees must obey the traffic laws. The claimant signed that policy on or about October 24, 2017.

The employer has a phone assigned to each driver which contains an app that allows the employer to track a driver's route, stops, and speed. The claimant was first shown how to use this app on May 7, 2018. The only time the employer has had problems with the tracking app is when the phone runs out of battery.

On May 7, while getting ready to do a delivery, the claimant had observed to his supervisor, Parts and Service Manager Tyler Jordan, that he could stop and visit other customers while out making deliveries. Jordan directed the claimant that he was only to stop at the customers

specified for delivery as he needed him to get back to the shop. Jordan had previously told the employees that they could not take the truck home without prior permission.

On May 8, the claimant was assigned to a truck route that should have taken two and a half to three and a half hours. Jordan did give the claimant permission to make one additional stop for a customer that was not on the planned route. The claimant left for the route around 11:00 a.m. Jordan observed, through the tracking app, that the claimant made numerous stops outside of his previously planned route, took the truck home for approximately twenty minutes, and was flagged by the app on four different occasions driving in excess of 80 miles per hour on rural roads. The claimant did not return from his deliveries until sometime between 4:30 and 5:00 p.m. The claimant did not have any issues with his phone.

Jordan reported his observations to General Manager Curtis Patrick and HR Director Kelly Kern. Based on the excessiveness of the claimant's speed and his failure to follow Jordan's instructions, the claimant was discharged. The claimant had not had any prior warnings during his 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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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). 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). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless

indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has an interest in ensuring the safety of its drivers and the public. It requires all employees operating company vehicles to obey all traffic laws. Additionally, the employer has an interest in being able to determine how best to use its employees' time and making sure the employees follow directives from their supervisors. The claimant's conduct on May 8 indicates a deliberate disregard for the employer's interests. He unsafely exceeded the speed limits and disregarded his supervisor's reasonable instruction given the day before. The claimant's conduct is disqualifying without prior warning. Accordingly, benefits are denied.

DECISION:

The May 25, 2018, reference 06, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs