

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIK D SMITH
Claimant

APPEAL 19A-UI-06622-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON COMMUNITY SCHOOL DIST
Employer

OC: 07/07/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant/appellant filed an appeal from the August 12, 2019 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 16, 2019, at 2:00 p.m. Claimant participated. Employer participated through Chris Turner, Transportation Director. No exhibits were admitted.

ISSUE:

Whether claimant's separation was a discharge 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 full-time bus driver from October 5, 2018 until his employment with Clinton Community School District ended on July 26, 2019. (Turner Testimony) Claimant's direct supervisor was Chris Turner. (Turner Testimony)

Employer has policies requiring bus drivers to obey motor vehicle laws and to not use electronic devices while operating a motor vehicle. (Turner Testimony) Employer also has a progressive discipline policy. (Turner Testimony) The policies are outlined in the employee handbook. (Turner Testimony) Claimant received a copy of the handbook. (Claimant Testimony)

On May 28, 2019 and June 12, 2019, claimant violated a motor vehicle law and employer policy by using his cellular telephone and failing to wear a seat belt while operating a school bus. (Turner Testimony) A written warning was issued on June 19, 2019, which stated that future occurrences would lead to further disciplinary action up to and including termination. (Turner Testimony) On July 11, 2019, claimant drove a school bus for a field trip. (Turner Testimony) Later that day, adults who were supervising the field trip complained to employer that claimant was driving erratically. (Turner Testimony) Turner was out of the office, but returned on July 22, 2019. (Turner Testimony) Upon Turner's return, he reviewed video taken from the bus on July 11, 2019. (Turner Testimony) Turner observed claimant speeding, failing to stop for a railroad crossing, improperly passing another vehicle and actively using his electronic device while operating the school bus. (Turner Testimony) Claimant was scheduled to drive for a field trip on July 24, 2019; employer cancelled claimant's shift because it did not feel comfortable with claimant driving a bus after viewing the video from July 11, 2019. (Turner Testimony)

On July 26, 2019, claimant was confronted and given an opportunity to explain his actions on July 11, 2019. (Turner Testimony) Claimant stated that he was using his cellular telephone for directions to the field trip site because employer did not provide printed directions. (Turner Testimony; Claimant Testimony) Claimant had previously used his cellular telephone while driving for directions and was told that he could request printed directions from employer before beginning a shift. (Turner Testimony) Claimant requested printed direction on July 11, 2019, but did not follow up when they were not immediately provided. (Claimant Testimony) On July 26, 2019, employer terminated claimant's employment due to claimant's motor vehicle violations while operating the school bus on July 11, 2019. (Turner Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct.

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.

Iowa Admin. Code r. 871-24.32(1)a provides:

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's testimony to be more credible than the claimant's testimony.

Claimant's actions while driving a school bus on July 11, 2019 violated employer's policies and motor vehicle laws and were a material breach of the duties and obligations he owed to employer. The violations occurred after claimant had been warned that further incidents may lead to termination of his employment. Claimant's violations are substantial as they risk the safety of everyone riding on the bus and other travelers. Employer has met its burden of proving a current act of substantial, job related misconduct. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The August 12, 2019 (reference 03) unemployment insurance decision is affirmed. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs