

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICK A FISCHER
Claimant

NORTH CEDAR TRUCKING LLC
Employer

APPEAL 20A-UI-08197-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/22/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 26, 2020 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 25, 2020, at 9:05 a.m. Claimant participated. Employer participated through Diana Paduska, Co-owner, and Lorraine Polhamus, Office Assistant. No exhibits were admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time driver from May 13, 2018 until his employment with North Cedar Trucking ended on April 17, 2020. Claimant's Department of Transportation physical expired February 12, 2020. The physical is required for claimant to maintain his license and, thus, his job with employer. Employer reminded claimant to complete his physical 90, 60 and 30 days prior to expiration. Claimant did not get his physical completed prior to February 12, 2020 and his license expired. Claimant filed an initial claim for unemployment insurance benefits effective March 22, 2020. On April 17, 2020, employer inquired as to the status of claimant's physical. Claimant reported that he had still not completed it. Employer terminated claimant's employment for failure to complete the physical and maintain his license.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for disqualifying job-related misconduct. Benefits are denied.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). A voluntary leaving of

employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating his employment relationship with North Cedar Trucking. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

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 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(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 of misconduct 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 maintenance of a license is an employee's responsibility without an agreement to the contrary. The employer is not obligated to accommodate an employee during a license suspension or revocation period but does have a legal obligation to abide by state and federal transportation safety statutes and regulations and not allow unlicensed individuals to drive. Claimant's failure to maintain a valid CDL license as a known condition of his employment constitutes disqualifying job-related misconduct. Benefits are denied.

NOTE TO CLAIMANT: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do

not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.

DECISION:

The June 26, 2020 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Adrienne C. Williamson
Administrative Law Judge
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September 4, 2020
Decision Dated and Mailed

acw/sam