IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

68-0157 (9-06) - 3091078 - EI

KENDALL J BUCKINGHAM
Claimant

DURANT IRON & METAL CORPORATION
Employer

APPEAL NO. 18A-UI-07632-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/17/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Durant Iron & Metal Corporation (employer) appealed a representative's July 9, 2018, decision (reference 02) that concluded Kendall Buckingham (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 3, 2018. The claimant participated personally. The employer participated by Ray Waddell, Operations Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on February 9, 2018, as a full-time truck driver. He signed for receipt of the employer's handbook. The claimant was required to have a Class A, Commercial Drivers' License (CDL), to perform his job. His medical card was set to expire on May 5, 2018. He followed the procedure for renewing his medical card and Class A, CDL.

On June 8, 2018, the Department of Transportation sent the claimant and the employer a letter stating the claimant had not renewed his CDL on May 5, 2018, and his license was downgraded to a Class C. On June 8, 2018, the claimant called the Department of Transportation. It said the claimant had, at all times, a Class A, CDL and the letter was issued in error. On June 11, 2018, the claimant went to the Department of Motor Vehicles. It said the claimant had, at all times, a Class A, CDL. The claimant did not provide proof to the employer from the Department of Transportation that the letter was in error. On June 11, 2018, the employer terminated the claimant because the insurance company would not insure the claimant and the claimant had driven without a proper license from May 5, 2018, to June 8, 2018.

The claimant filed for unemployment insurance benefits with an effective date of June 17, 2018. The employer provided the name and number of Ray Waddell as the person who would participate in the fact-finding interview on July 6, 2018. The fact finder called Mr. Waddell but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The business was open but the employer did not respond to the message. Mr. Waddell was on vacation. He is the only person who works for the employer who handles mail or calls from the department.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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(1)a provides:

> 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 has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). In this case, the employer relied solely on the letter from the Department of Transportation. The insurance company would not

insure the claimant because of the information contained in the letter from the Department of Transportation. If the information in the letter were incorrect, there would be no misconduct.

The claimant investigated the information in the letter. The employer did not. The claimant testified that he found the information to be incorrect. The employer did not provide sufficient evidence of job-related misconduct and, therefore, did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 9, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs