

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH R ROBERTSON
Claimant

APPEAL NO: 17A-UI-09579-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AG PARTNERS LLC
Employer

OC: 12/04/16
Claimant: Appellant (1)

Iowa Code § 96.5(2) a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated September 13, 2017, reference 06, was denied unemployment insurance benefits finding that the claimant was discharged from work on August 2, 2017 for failure to follow instructions in the performance of his job. After due notice was provided, a telephone hearing was held on October 4, 2017. Claimant participated. The employer participated by Mr. Douglas Pittman, Plant Manager and Mr. Heath Karnes, Assistant Plant Manager. Employers Exhibits 1 and 2 were admitted into the hearing record.

ISSUE:

Whether the claimant was discharged for misconduct in connection with is work sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Jeremiah Robertson began his employment with Ag Partners LLC on January 30, 2017. The claimant worked as a full-time feed truck delivery driver and was paid by the hour. His immediate supervisor was Heath Karnes. The claimant was discharged from employment August 3, 2017, based upon a driving incident that had taken place on the night of August 2, 2017.

On the evening of August 2, 2017, Mr. Robertson was assigned to deliver feed to a client location approximately one and one half hours away from the employer's facility. Drivers are provided the address of the delivery site and the company provides an electronic "tablet" in each truck, for the purpose of giving the driver the most direct and authorized route to take to reach delivery destinations. Although the authorized and most direct route was available on the tablet in his truck, Mr. Robertson chose to take an alternative route for a change in scenery. While using a highway that was not authorized by the company's electronic equipment, the claimant encountered road construction and then chose to use his personal cellular telephone to find and alternate route around the construction. Subsequently, Mr. Robertson entered a residential area with the company semi-truck and trailer and encountered a dead end. Because of the

narrow street and parked cars, he could not back up. The claimant then attempted to turn the tractor trailer around without insuring that he could safely do so. As the claimant drove the truck over a curb the trucks fuel lines were damaged by a large rock causing the tractor trailer to be inoperable and a fuel spill.

Mr. Robertson had previously received a written warning and a three day suspension from work without pay on June 15, 2017, after he had failed to use the on board tablet to a drop site, and dropped the feed in the wrong location. Claimant was warned at that time that further conduct of that nature could result in his termination from employment.

At the time the claimant was hired, he was given verbal and written instructions on the standard operating procedure for company deliveries and the use of the company's tablet. At the time of discharge, Mr. Robertson did not dispute the employer's assertion that failure to use the company tablet in route to the delivery site was a policy violation. (See Employers Exhibit 1).

It is the claimant's position that the use of the company "tablet" was optional on the part of the driver and that the tablet was provided only as an aid to be used by the driver, but the use was not required.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Jeremiah Robertson was discharged for misconduct in connection with the employment, it does.

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).

Since the claimant was discharged, the employer has the burden of proof in this matter. See Iowa Code Section 96.6 (2). The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). In the case at hand, the evidence establishes that the company had placed electronic "tablet" in company trucks for the purpose of providing drivers the safest and most direct route to client locations that had been approved by the company. Each driver is given training on the system and acknowledge that they had received a copy of the company's standard operating procedure for the use of the on-board tablets. The system not only provided the most direct and safest route, but it was also the route that the company had pre-approved for drivers to reach client locations.

When Mr. Robertson had failed to properly use system in June 2017, and delivered to a wrong location, he had been suspended from work for three days and received a written warning. Claimant was thus placed on notice of the employer's expectation that he would use and follow the electronic systems provided by the company, or face discharge from employment.

On the evening of August 2, 2017, the claimant chose to turn off or disregard the employer's system and instead take a highway of his own choosing because he wanted different scenery. When the highway was blocked due to construction, the claimant chose to use his cell phone instead of the company tablet for redirections that caused a potentially serious safety issue by the claimant operating the company's tractor trailer unit in a congested residential area. The events of the evening compounded when Mr. Robertson attempted to turn the tractor trailer around in a confined area without first insuring he could safely do so. While attempting to turn the unit around, the claimant damaged the trucks fuel lines making it inoperable and causing a fuel spill.

The administrative law judge concludes that the employer has sustained its burden of proof in showing that the claimant was discharged for misconduct in connection with his work. Claimant was aware of the reason that the employer had placed the tablets in the company trucks and had been warned prior to discharge. The administrative law judge also notes that although the claimant was given an opportunity to comment on his discharge form, he did not dispute the employer's assertion on the document for his failure to use the tablet was against company policy.

Based upon the evidence in the record, the application and the appropriate law, the administrative law judge concludes that Mr. Robertson was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times her weekly benefit amount and is otherwise eligible. The employer's account shall not be charged.

DECISION:

The Agencies representative's September 13, 2017, reference 06 decision is affirmed. The claimant was discharged for misconduct in connection with his work. Claimant is disqualified for unemployment insurance benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible. The employer's account shall not be charged.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn