

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WILLIAM BOUNDS
Claimant

APPEAL NO. 18A-UI-06801-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONSUMERS SUPPLY DISTRIBUTING LLC
Employer

OC: 05/27/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

William Bounds filed a timely appeal from the June 14, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Bounds was discharged on May 23, 2018 for violation of a known company rule. After due notice was issued, a hearing was held on July 10, 2018. Mr. Bounds participated. Cecily Johnston represented the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Bounds was employed by Consumers Supply Distributing, L.L.C. as a full-time over-the-road commercial truck driver from 2014 until May 23, 2018, when the employer discharged him for using a hand-held cell phone while operating a tractor-trailer rig. Both federal law and the employer's work rules prohibited use of a cell phone while operating the employer's tractor trailer rig. On May 14, 2018, Mr. Bounds was stopped by a South Dakota state trooper and cited for the offense. Mr. Bounds did not notify the employer of the violation, but included a copy of the citation in his trip materials he submitted to the employer. Prior to discharging Mr. Bounds from the employment, the employer spoke to Mr. Bounds about the violation. Mr. Bounds advised the employer had he had indeed used his cell phone while he was traveling 68 miles per hour on Interstate 29 in South Dakota. Mr. Bounds had been a commercial truck driver for more than a decade and was well aware both of the federal law and the employer's work rule prohibiting cell phone use while operating a commercial rig. Mr. Bounds made no mention to the employer of any purported family trauma or other extenuating circumstance that necessitated him using the phone while operating the rig.

REASONING AND CONCLUSIONS OF LAW:

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 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

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 Ct. 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 weight of the evidence in the record establishes a discharge based on misconduct in connection with the employment. The evidence in the record establishes that Mr. Bounds was discharged in response to a knowing and intentional violation of federal law and the employer's work rules. The weight of the evidence indicates that significant aspects of Mr. Bounds' testimony were not credible. For example, the notion that Mr. Bounds had been a commercial truck driver for more than a decade and was unfamiliar with the law prohibiting cell phone use while operating a commercial truck was simply not credible. The weight of the evidence establishes that Mr. Bounds' assertion of a family trauma as an excuse for using the phone also was not credible. Mr. Bounds failed to mention any such extenuating circumstance to the employer. Regardless, that would offer no justification for endangering the public, endangering Mr. Bounds, or endangering the employer's property through unlawful use of the cell phone.

Because the evidence establishes a discharge for misconduct in connection with the employment, Mr. Bounds is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Bounds must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The June 14, 2018, reference 01, decision is affirmed. The claimant was discharged on May 23, 2018 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs