

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY M BRUCE
Claimant

3PL CORP
Employer

APPEAL 20A-UI-01995-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 24, 2020 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 20, 2020. The claimant, Corey M. Bruce, did not participate. The employer, 3PL Corp., participated through witnesses Aaron Mailey, Bethany Ruby, Kyra McLaughlin and Shelly Hill. Employer's Exhibit 1 was admitted. The administrative law judge took official notice of the claimant's administrative records.

On April 20, 2020, at 10:37 a.m., the claimant sent an email to the Appeals Bureau indicating that he was working at another job and would be unable to attend the 11:00 a.m. hearing that day. The email requested a reschedule of the hearing date and time. Given that the hearing notice was mailed to the parties on March 23, 2020 and claimant had prior knowledge that he may have needed to request a reschedule of the hearing prior to 10:37 a.m. on April 20, 2020, the claimant's request to postpone the hearing was denied.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time logistics account manager from April 3, 2017 until his discharge on January 31, 2020. Claimant's job duties included making arrangements for carriers to transport loads of goods for customers. Kyra McLaughlin was claimant's immediate supervisor.

The final incident leading to discharge involved a load that the claimant had arranged for transport. The carrier was late delivering the load to the customer and the crane company, who

was going to provide the crane to unload it, had left the site. The driver contacted the claimant because the crane was not at the site and the crane company refused to come back to the site until the driver paid for the crane. The drivers typically do not pay for the crane. The driver became frustrated and used his credit card to secure payment for the crane in order to unload the truck. The driver then stopped payment on his credit card and the crane company sought payment from this employer's client.

This matter came to Mr. Mailey's attention when the customer reached out to this employer about payment of the crane bill. Claimant had not provided information about the crane bill to either Mr. Mailey or Ms. McLaughlin when this incident occurred. Claimant was discharged for dishonesty. Claimant had no previous verbal or written discipline prior to the discharge.

Claimant's administrative records establish that he has been paid unemployment insurance benefits of \$1,630.00 between January 26, 2020 and March 7, 2020. The employer participated in the initial fact-finding interview by telephone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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:

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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Iowa Code § 96.6(2); *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The misconduct must be "substantial." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) (citation omitted). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. *Id.* (citation omitted). Mere negligence is not sufficient. *Id.* at 666.

When the conduct is based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated 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." *Greenwell v. Emp't Appeal Bd.*, 879 N.W.2d 222, 228 (Iowa Ct.App. 2016)(citing Iowa Admin. Code r. 871-24.32(1)a).

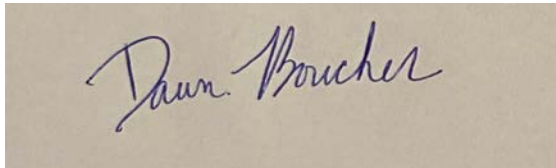
There was no credible evidence presented that the claimant engaged in a deliberate act of dishonesty or engaged in a deliberate omission which constituted a material breach of his duties and obligations as an employee. Further, claimant's actions do not rise to the level of carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct prior to discharge. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

Claimant received no previous warnings, or specific instructions, that he needed to bring these types of issues to his supervisor. His attempt to triage the situation may amount to an isolated incident of negligence, at best. As such, the employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. Benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue regarding overpayment of benefits is moot.

DECISION:

The February 24, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



Dawn Boucher
Administrative Law Judge

April 24, 2020
Decision Dated and Mailed

db/scn