

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GARY J HODGMAN**  
Claimant

**DECKER TRUCK LINE INC**  
Employer

**APPEAL 17A-UI-03686-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/05/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the March 24, 2017 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 28, 2017. The claimant, Gary J. Hodgman, participated personally. The employer, Decker Truck Line Inc., participated through witness Courtney Bachel. Employer's Exhibits 1 through 5 were admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did claimant voluntarily quit the employment with good cause attributable to employer?  
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 full-time as an over the road truck driver from June 12, 2013, until he was discharged on February 7, 2017. His last day physically worked on the job was December 29, 2016. Claimant's direct supervisor was Alan Rupe. Claimant was required to comply with the Federal Motor Carrier Safety Act.

The final incident leading to discharge occurred on January 6, 2017. Claimant was absent from work after December 29, 2017 due to a medical condition he suffered from. On January 6, 2017, another employee picked up the claimant's truck so that it could be used by the company for another driver. When that employee picked up the truck, he found empty beer cans in the truck. He reported that he found empty beer cans to the employer.

On January 10, 2017 claimant forwarded a doctor's note to the employer that he would need to be off work for at least a month due to his medical condition. Claimant was scheduled to return to work February 20, 2017. No medical leave under the Family Medical Leave Act was ever approved for claimant because he failed to provide the company with enough information to grant him leave.

On February 7, 2017, Andrea Kloberdantz and Ms. Bachel telephoned claimant and informed him that he was being discharged from employment due to empty beer cans being found in his truck on January 6, 2017. On this date, claimant admitted that he drank beer occasionally while off duty and that the beer cans were thrown in the trash in his truck. Claimant received a copy of the employer's policy regarding drugs and alcohol. See Exhibit 1. This policy prohibited a driver from possessing alcohol while on duty or operating a commercial motor vehicle unless the alcohol is manifested and transported as part of a shipment. See Exhibit 3.

Claimant has received unemployment insurance benefits in the amount of \$3,129.00 for the seven weeks between March 5, 2017 and April 22, 2017. Employer did participate in the fact-finding interview.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no current act of misconduct. Benefits are allowed.

As a preliminary matter, the administrative law judge finds that the Claimant did not quit. Claimant was discharged from employment.

Iowa Code § 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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

(4) 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.

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 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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).

In this case, over a month passed between when the employer became aware of claimant's violation of company policy and the discharge from employment. A claimant cannot be discharged for a past act of misconduct.

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

(8) *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 purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. For example, an employer may not convert a lay off into a termination for misconduct by relying on past acts. *Milligan v. EAB*, 10-2098 (Iowa App. June 15, 2011).

There is an indication in this case that this employer was motivated to save up this act of misconduct and spring it on the claimant when it wanted to discharge him. The proper date for determining if the act was a past act or a current act of misconduct is the date the employee was notified that their conduct was grounds for dismissal. *Greene v. EAB*, 426 N.W.2d 659 (Iowa App. 1988). Here, claimant was never notified until February 7, 2017, the actual date of discharge, that his actions in having empty beer cans in the truck could be grounds for dismissal. This was over a month between the employer becoming aware of the act and

discharging claimant. The fact that claimant was not working at the time is not dispositive with regard to the act being current. It is clear that Ms. Kloberdantz and Ms. Bachel knew how to get ahold of claimant as they did so on February 7, 2017 without issue. Further, there was communication between the employer and claimant during the time between January 3, 2017 and February 7, 2017 regarding his request for leave of absence. This was not a case where claimant was intentionally avoiding the employer's contacts with him.

The employer failed to meet its burden of proof of establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Because benefits are allowed, the issues of overpayment and chargeability are moot.

**DECISION:**

The March 24, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs