

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAN E SMITH
Claimant

APPEAL NO. 20A-UI-02836-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROW AUTOMOTIVE SERVICES INC
Employer

OC: 01/12/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 27, 2020, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 27, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 5, 2020. Claimant Dan Smith participated. Randy Crow represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 and A into evidence.

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: Crow Automotive Services, Inc. is a vehicle towing company. Dan Smith was employed by Crow Automotive from January 24, 2020 until February 27, 2020, when Randy Crow, President, discharged him from the employment. Mr. Crow had manager Diana Hernandez carry out the discharge. Mr. Smith came to the employment with experience in operating a hook-and-chain or wheel-lift tow truck, but no experience in operating a flatbed tow truck. Mr. Crow hired Mr. Smith to operate a flatbed tow truck and arranged for one or two experienced drivers to train Mr. Smith in properly securing and hauling vehicles with the flatbed unit. Properly securing the vehicle to the bed of the trailer pursuant to a four-point attachment protocol was of paramount importance in safely transporting the towed vehicle. On February 26, 2020, Mr. Crow watched from his office window as Mr. Smith improperly secured a vehicle to a flatbed trailer. Mr. Crow based his decision to discharge Mr. Smith from the employment on this observed incident and on reports from the trainer that Mr. Smith had been improperly securing vehicles. Mr. Smith knew the proper protocol for securing a vehicle to the trailer. Mr. Smith denies that he improperly secured the vehicle on February 26, 2020, and asserts he had ever secured a vehicle in the area outside Mr. Crow's office window, and finds fault with several aspects of the

training he received during the brief employment. Mr. Smith was frequently directed to assign in “the yard” of the workplace in lieu of receiving training in towing vehicles. Mr. Smith’s trainer was often on his cell phone or otherwise distracted during the time when Mr. Smith was supposed to receive his training. During a time when the trainer was supposed to be training Mr. Smith, the trainer had Mr. Smith wait for an extended period as the trainer shopped at Walmart. The trainer had Mr. Smith accompany the trainer while the trainer stopped to look at vehicles for sale. The trainer assured Mr. Smith that Mr. Smith was doing fine. The trainer showed Mr. Smith a short-cut of securing the vehicle at only two points, which Mr. Smith rejected as insufficient to secure the vehicle. Mr. Smith was still in training at the time of the discharge. Mr. Smith’s trainers checked Mr. Smith’s work before Mr. Smith left the employer’s yard with a vehicle in tow. Mr. Smith received no reprimands prior to being discharged from the employment.

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).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The employer was legitimately concerned that vehicles be properly secured so that they could be safely towed. The weight of the evidence indicates that Mr. Crow, the business owner, did indeed observe Mr. Smith improperly secure a vehicle on February 26, 2020. The employer presented insufficient evidence to prove an intention to improperly secure the vehicle or an intention to disregard the employer's protocol. The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove prior incidents of Mr. Smith improperly securing vehicles. The employer also presented insufficient evidence to rebut Mr. Smith's testimony regarding the multiple deficiencies in the training he received. The evidence fails to establish a willful and wanton disregard of the employer's interests. Mr. Smith is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits. However, the employer is not a base period employer for purposes of the current claim year and, therefore, will not be charged for benefits paid to the claimant in the current claim year that will expire on October 17, 2020.

DECISION:

The March 27, 2020, reference 01, decision is affirmed. The claimant was discharged on February 27, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.



James E. Timberland
Administrative Law Judge

May 15, 2020
Decision Dated and Mailed