

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAVID D WAGENKNECHT
Claimant

CROP PRODUCTION SERVICES INC
Employer

APPEAL 20A-UI-00915-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
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:

On January 31, 2020, the employer filed an appeal from the January 23, 2020, (reference 04) unemployment insurance decision that allowed benefits based on a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on February 17, 2020. Claimant participated. Employer participated through manager Gary Mensen and was represented by Jackie Nolan. Employer's Exhibit 1 was received.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid 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 began working for employer on September 6, 2019. Claimant last worked as a full-time sprayer operator. Claimant was separated from employment on December 6, 2019, when he was terminated.

On December 4, 2019, claimant was driving a straight truck with a tandem axle. Claimant was training to obtain his commercial driver's license. A more experienced driver, Steve Meyers, was in the passenger's seat. Claimant took too narrow of a turn and the road was icy. As a result, the truck went in the ditch. Claimant did not disobey any verbal instructions given to him by Meyers. The truck had to be pulled out of the ditch, but it was not damaged and there were no injuries.

On December 6, 2019, employer terminated claimant's employment.

Employer had never previously disciplined claimant regarding any driving issues.

Employer has a safe driving policy. Claimant's conduct on December 4, 2019, did not violate employer's safe driving policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Code § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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). Misconduct justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *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 is not 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). 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).

In this case, claimant put a truck in the ditch when he made too narrow of a turn on an icy road. Claimant's actions were not intentional. Employer was aware claimant was training to obtain his CDL. Claimant did not violate any verbal instructions given to him by his more experienced passenger. Claimant had never been previously disciplined for any similar conduct. At most, employer established claimant was negligent when driving the truck. Employer failed to establish claimant was terminated for misconduct.

Because the separation from employment is not disqualifying, the issues regarding overpayment of benefits are moot and will not be discussed further in this decision.

DECISION:

The January 23, 2020, (reference 04) unemployment insurance decision is affirmed. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Christine A. Louis
Administrative Law Judge
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February 20, 2020
Decision Dated and Mailed

cal/scn