

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JASON A GLADDEN**  
Claimant

**STOCKTON TOWING INC**  
Employer

**APPEAL NO. 21A-UI-05938-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 16, 2021, reference 04, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant was discharged on December 2, 2020 for failure to follow instructions in the performance of his job. After due notice was issued, a hearing was held on April 30, 2021. Claimant participated. Rhonda McKee 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: The claimant was employed by Stockton Towing, Inc. as a full-time heavy haul driver from December 2019 until December 2, 2020, when the employer discharged him from the employment. The claimant's usual work hours were 8:00 a.m. to 6:00 p.m., Monday through Friday and on alternating weekends.

The incident that served as the ostensible basis for the discharge occurred at some point between November 14 and 16, 2020 and came to the employer's attention at that time. The claimant tried to maneuver the employer's tractor-trailer rig around a piece of heavy equipment that was blocking an intersection and, in the process, drove over the curb and onto a lawn. The employer's rig sunk into the lawn and caused damage to the lawn. The claimant promptly reported the incident to the employer. The employer had liability insurance and a claim was made against the employer's insurance.

On December 23, 2020, the business owner, Mark Stockton, sent two text messages to the claimant. The first text message stated that the employer wanted to meet with the claimant "to get an explanation on the table." The claimant understood the text message to be in reference to a wage claim the claimant had filed with the Iowa Division of Labor. Four to six weeks earlier,

the claimant had suffered injury to knee in the course of the employment. The injured required medical evaluation. The claimant thereafter observed that the employer had commenced deducting funds from the claimant's paycheck without the claimant's consent to recover the medical expense. The claimant responded by filing the wage claim with the Iowa Division of Labor to recover the lost wages. The matter was still pending at the time of the discharge.

Within half an hour of sending the first text message on December 2, 2020, Mr. Stockton sent the claimant a second text message. The employer referenced the most recent property damage insurance claim. The employer stated that due to the damage the claimant had caused to employer's property and others' property, the employer was terminating the employment.

In early November 2020, the claimant and a coworker were sent to tow a damaged semi-tractor. Though the usual procedure was to hoist the rear of the towed vehicle for transport, the vehicle in question had to be towed facing forward. Neither the claimant nor the coworker thought to disengage the transmission of the towed vehicle. As a result, towing the vehicle resulted in extensive damage to the engine of the towed vehicle.

Within a couple months of starting the employment, the claimant was hauling a track boom lift to Minnesota when a latch came loose on the equipment's lid during transit. This led to damage to the track boom lift. Shortly before the damage occurred, the claimant had stopped for fuel and had checked to make sure the track boom lift was properly secured. After the incident, the employer advised that the claimant should secure the lid.

## **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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes an incident of negligence and an incident of carelessness, but does not establish a pattern of such conduct that would indicate a willful and wanton disregard of the employer's interests. The lawn damage that occurred sometime between November 14 and 16, 2020, involved carelessness on the part of the claimant. The damage to the lawn was foreseeable. A reasonable person would not expect a lawn to be frozen in mid-November and would not expect it to support the weight of a tractor-trailer rig even if it was frozen. The damage to the towed tractor that occurred in early November 2020 involved negligence on the part of the claimant and the coworker, when they caused extensive and costly damage to the engine by failing to disconnect the transmission before towing the vehicle. The incident from early in the employment with the track boom lift was not foreseeable and did not involve careless or negligence on the part of the claimant.

The weight of the evidence in the record establishes that the claimant's wage dispute was also a factor in the discharge. The employer presented insufficient evidence to rebut the claimant's testimony that the initial December 2, 2020 text message from the employer was regarding the wage dispute. Sending a termination message within 30 minutes after the first message supports the claimant's assertion that the wage dispute was a factor.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The February 16, 2021, reference 04, decision is reversed. The claimant was discharged on December 2, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

August 31, 2021  
Decision Dated and Mailed

jet/scn