

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BOB J DELVEAU
Claimant

APPEAL 21A-UI-04119-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CORKERY TRANSPORT INC
Employer

OC: 12/06/20
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 January 21, 2021 (reference 01) unemployment insurance decision that allowed unemployment insurance benefits to the claimant based upon the claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 5, 2021. The claimant participated personally. The employer participated through witness Ross Corkery. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Is the claimant overpaid benefits?

Did the employer participate in the fact-finding interview?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a sales manager. He began his employment on May 29, 2019 and his employment ended on December 11, 2020 when he was discharged.

Part of claimant's job duties included answering emails and updating software regarding the employer's loads that were being transported. Claimant was verbally warned on March 24, 2020; May 22, 2020; July 20, 2020; November 12, 2020; and December 3, 2020 about promptly following up with customer's emails and making sure the software reflected the proper information about the loads. Claimant told the employer that he forgot on occasion to update the software or was working on other job duties that kept him from responding promptly. Claimant would have over 100 emails daily on some occasions. Claimant did not receive any written warnings notifying him that his job was in jeopardy. On December 9 or 10, 2020, claimant took most of the day to respond to a customer about a load. This led to the employer's decision to discharge him on December 11, 2020.

Claimant's administrative records establish that he was paid regular unemployment insurance benefits of \$7,965.00 from December 6, 2020 through March 27, 2021. The employer did participate in the fact-finding interview when it was cold called by the Benefits Bureau. Mr. Corkery participated by telephone and gave the interviewer information about the claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

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

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

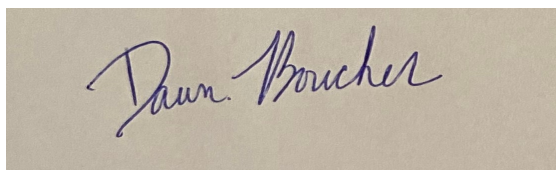
disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job-related 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).

The employer failed to establish that the claimant's final incident of not responding to an email within a certain period of time was substantial misconduct that would justify termination of the claimant. Further, if an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has failed to establish any intentional and substantial disregard of the employer's interest which rises to the level of willful misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment of benefits is moot.

DECISION:

The January 21, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

April 7, 2021
Decision Dated and Mailed

db/kmj