

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LAKITA S WATSON
Claimant

APPEAL NO: 18A-UI-04679-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALTER TRADING CORPORATION
Employer

OC: 03/25/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's unemployment insurance decision dated April 13, 2018, (reference 01) which denied unemployment insurance benefits finding that the claimant was discharged from work on March 28, 2018, for violation of a known company rule. After due notice was provided, a telephone hearing was scheduled for and held on May 9, 2018. Claimant participated. Employer participated by Ms. Diana Perry-Lehr, Hearing Representative and Witnesses Ms. Jenna Maloney, Human Resource Generalist and Ms. Krista Shult, Corporate DOT Administrator.

ISSUE:

The issue is whether the claimant was discharged for intentional work connected misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Lakita Watson was employed by Alter Trading Corporation from July 31, 2017 until March 28, 2018, when she was discharged from employment. Ms. Watson held the position of full-time CDL driver for the company and was paid by the hour. Her immediate supervisor was the facility manager, Alex Lewis.

Ms. Watson was discharged on March 28, 2018, after she exceeded the permissible number of points assessed by the Alter Trading Corporation for DOT violations. If a driver is assessed three or more violation points within a three month rolling period, the driver is excluded from operating company vehicles and discharged from employment. Under company policy, drivers are assessed three points for infractions such as driving while intoxicated, refusing a substance test, reckless driving, manslaughter, hit and run, etc. Two point violations include "at fault" violations such as accidents and roll overs. C-type violations such as speeding, hours of service violations, distracted driving, failure to yield, etc. are assessed one point. Type-D half point violations include non-moving matters such as log book violations, equipment violations, and failure to secure load violations. Drivers may take a management-approved defensive driver course to remove one point.

Under company policy, it is the driver's responsibility to inspect and determine whether the tractor trailer that the driver is operating is safe and in compliance with DOT regulations. Drivers are required to do a pre-trip inspection at the start of the day and to inspect the tractor trailers throughout the day as they operate the equipment. Drivers are required to inspect and prepare a written pre-trip and post-trip inspection of all tractor trailers and straight trucks.

On January 17, 2018, Ms. Watson received a DOT equipment violation when one of the lights on her truck was not operable. On March 10, 2018, claimant received a citation for improperly securing material in the back of the truck, resulting in an out-of-service designation by the DOT. The claimant was aware that she had at that time accumulated 1.5 company violation points.

The final incident that resulted in the claimant's discharge took place on March 27, 2018. On that date, Ms. Watson inspected the truck she was assigned to and completed the inspection report, finding no equipment violations. As she proceeded through the work day, she did walk-around inspections of the truck and found no equipment defects. Late that day, Ms. Watson was pulled over by the DOT for a suspected seatbelt violation. When it was found that the claimant was wearing the required seatbelt, the DOT then conducted a thorough road-side inspection. This included the inspector crawling underneath the vehicle as well as the more common visual inspection of the vehicle, as the inspector walked around it.

Ms. Watson was given four equipment citations that day. The first was because the inspector was able to detect an "audible air leak" near the truck's transmission. The second infraction was for improper brake adjustment. The third was because a brake adjuster was inoperable. The fourth violation was because the DOT inspector detected a power steering leak under the truck. The truck was not taken out of service and the inspector instructed Ms. Watson to report the violations for repair. The claimant reported the violations to the company as required by company policy. Because the claimant received citations, the employer concluded that Ms. Watson should have discovered these defects and should not have operated the truck until it was repaired.

Based upon the information given to her by the company, Ms. Watson was in compliance with the company rule that she inspect the company equipment prior to beginning the workday and throughout the day. Ms. Watson did a visual inspection of the outside of the truck and portions of the truck that were visible and had detected no leaks either of fluid or air. The truck's brakes seemed to have normal stopping power and the claimant did not detect any improper adjustment or malfunction of the brake adjusters.

It is the claimant's position that the defects noted by the DOT's inspector were of the type that she could not be reasonably expected to find by the daily walk-around inspections she had performed at the beginning and through her work shifts. Ms. Watson asserts that defects of the type noted by the DOT could only be discovered by a trained inspector or mechanics who would be able to locate such defects underneath the truck in areas not accessible to drivers. Ms. Watson agrees that a previous DOT citation for not properly securing metal shavings was appropriate and does not dispute assessment of infraction points by the company for that citation.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes work connected misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 to prove the claimant was discharged for work connected misconduct as defined by the Unemployment Insurance law. 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated careless or negligence that equals willful misconduct in culpability. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000).

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

In the case at hand, the claimant participated personally, providing first hand sworn testimony. The employer's witnesses, although knowledgeable about company policy and DOT requirements, were unable to provide first hand testimony about the roadside DOT inspection, circumstances, or whether the defects noted on the DOT citations could have been reasonably detected by the claimant on the company vehicle that day.

Ms. Watson testified that she had performed the required pre-trip inspection that day and that she had routinely looked over the truck throughout the day as she made stops with the truck. Ms. Watson testified that she had not detected any change in the truck's brake system. She further testified that no air leak was audible and that these defects as well as the power steering leak were found only when the trained inspector chose to examine the underside of the truck and that the under-truck inspection went beyond walk around inspections that drivers were required to perform during the workday. The administrative law judge finds Ms. Watson to be a credible witness and finds that her testimony is not inherently improbable. The administrative law judge also notes that Ms. Watson did not dispute a previous citation she had received under different circumstances.

The question before the administrative law judge in this case is not whether Alter Trading Corporation had a right to discharge Ms. Watson for the above stated reasons, but whether her discharge was disqualifying under the provisions of the Iowa Employment Security law. While the decision to terminate Ms. Watson may have been a sound decision from a management viewpoint, the administrative law judge concludes that the evidence does not establish willful misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. Accordingly, benefits are allowed, provided the claimant meets all the eligibility requirements of Iowa law.

DECISION:

The representative's unemployment insurance benefits decision dated April 13, 2018, reference 01, is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn