

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL A HAMMER**  
Claimant

**DANIEL BRUBAKER**  
Employer

**APPEAL 17A-UI-11086-JP-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/01/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 25, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 16, 2017. Claimant participated. Employer did not register for the hearing and did not participate. Claimant Exhibits A, B, and C were admitted into evidence with no objection.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a truck driver from September 2017, and was separated from employment on October 5, 2017, when he was discharged.

Claimant has a class A CDL. The Iowa DOT laws only allow claimant to drive eleven hours “[a]fter a 10-hour rest break[.]” Claimant Exhibit C. The Iowa DOT laws also require claimant “not drive after being on duty and/or driving for more than 8 hours since a break of at least ½ hour in length.” Claimant Exhibit C. The Iowa DOT laws only allow claimant to have a maximum of 14 hours of on duty time per day, which includes the eleven hours of drive time and loading and unloading time. Claimant Exhibit C. After 14 hours of on duty time, claimant is required to take a ten hour reset (break) before going on duty again. Claimant Exhibit C. Mr. Brubaker was aware of these rules. If claimant was caught out of compliance with the Iowa DOT rules, he is subject to a fine or a shut down.

After claimant was hired, the employer requested claimant run two loads a night. Claimant testified he complied with the employer’s request for a little while; however, he stopped running two loads a night because every time he was requested to drive two loads a night, it would cause him to be out of compliance with the Iowa DOT laws (claimant would be over his hours). Approximately two weeks after claimant started with the employer, he explained to the employer that if he had to run two loads a night he would be out of compliance with the Iowa DOT rules. The employer agreed to modify claimant’s schedule (two loads one night and then one load the next night) to allow him to be in compliance. After the employer agreed to modify claimant’s

schedule, it failed to modify his schedule and he was still scheduled to run two loads each night. Claimant continued to bring the compliance issue to the employer's attention. The employer told claimant it forgot and asked claimant to run two loads each night that week as scheduled and then it would modify claimant's schedule the next week. Claimant did the two loads each night that week, but the next week the employer again scheduled him for two loads a night each night. Claimant brought the issue to the employer's attention. Claimant refused to run two loads each night because it would place him out of compliance with the Iowa DOT laws. The employer then revised claimant's schedule to one load each night for the next four days. Claimant testified that after the fourth night of running just one load, Mr. Brubaker called him on October 5, 2017 and told him he was discharged for not being willing to run two loads a night.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

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 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). 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). 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 an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. During claimant's employment, he was continually requested to run two loads a night. Claimant presented substantial and credible evidence when he ran two loads a night, he would be out of compliance with the DOT rules. Claimant constantly brought this issue to the employer's attention until he finally refused to drive two loads a night for the employer. Claimant testified the employer then modified his schedule so he was only driving one load a night. However, after four days of driving only one load a night, claimant testified the employer then discharged him for not being willing to run two loads a night. Claimant's refusal to run two loads a night, which would cause him to be out of compliance with the DOT rules, is not job disqualifying misconduct. The employer has failed to meet its burden of establishing disqualifying job misconduct. Benefits are allowed.

**DECISION:**

The October 25, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs