

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

FRED V GRIFFEE

Claimant

APPEAL NO. 21A-UI-00258-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 03/29/20

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 13, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 4, 2021. Claimant participated personally. Employer participated by Rebeckah Ackerman.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on February 6, 2020.

Employer discharged claimant on February 27, 2020 because claimant failed a return to work road test.

Claimant worked as a full time over the road truck driver. On or around February 6, 2020 claimant suffered an injury. He filed a workers comp claim and was off from work for a nearly two weeks and had multiple doctor's visits. Claimant was released to return to work (driving only automatic transmission vehicles) on February 17, 2020. He was additionally released to return by the safety department on February 19, 2020. Employer stated that claimant had to do a return to work road test prior to his getting back on the road. This test was not stated with particularity in any of employer's document or company handbook, but is a policy employer follows.

Claimant took a test with a representative from employer on February 19. Employer's representative who conducted the test did not testify at the hearing, but documented claimant allegedly failing to look under his trailer; failing to do a visual inspection after hookup; and cutting off oncoming traffic with his trailer when making a turn. Claimant was said to have failed the road test. Claimant was then terminated.

Claimant testified that he did look under the trailer and did do an inspection after hookup. Claimant additionally testified that he did not cut off oncoming traffic during the test. He stated he's been driving for 30 years and knows how to gauge distances and oncoming traffic.

Employer stated that there is no specific documentation indicating that a driver will be terminated for one road test failure. Employer stated that claimant had not been given a warning for a road test failure prior to termination, but claimant had been given an employee handbook indicating claimant may be terminated at the will of employer.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

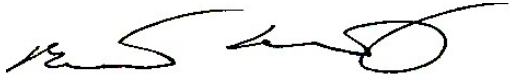
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. In this matter, employer had the opportunity to bring forth the witness as to claimant's alleged errors when conducting the driving test, but employer chose not to do so. Claimant refuted each of employer's claims as to his alleged lapses during the driving test.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning passing a road test or being terminated. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant had no notice or warning that failure to pass a road test would lead to termination. Employer did not prove that claimant failed to pass the road test. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated November 13, 2020, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

February 18, 2021
Decision Dated and Mailed

bab/kmj