

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

COURTNEY L JOHNSON
Claimant

APPEAL 16A-UI-06860-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN SERVICES IN IOWA INC
Employer

**OC: 03/27/16
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 15, 2016, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on July 7, 2016. The claimant participated personally. The employer participated through Heather Bartz, program supervisor. Claimant exhibit A and Employer exhibit 1 were received into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed part-time as a family support worker and was separated from employment on May 26, 2016, when she was discharged.

In July 2015, the claimant was involved in a car accident involving a bicyclist in her personal vehicle while conducting her work duties. The claimant was not ticketed for the accident at the time and the employer was made aware of the accident. The claimant continued to work for the employer and in April, voluntarily moved into a part-time position under the supervision of Ms. Bartz. In April, the claimant was also charged in connection to the accident. The criminal charges are currently pending. The claimant continued performing work for the employer until May 26, 2016, when the employer determined that based on the claimant's accident in July 2015 and a speeding ticket in her personal time and vehicle in April 2015, that the claimant was no longer insurable. She was subsequently discharged based on the employer's policies which require an employee in her role remain insurable under its carrier (Employer exhibit 1). The claimant had no prior warnings and was not previously disciplined for her role in the July 2015 accident.

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.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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. A determination as to

whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. An employer who sits with the knowledge of an act of misconduct and allows the individual continuing employment for an unreasonable period of work does not terminate for a current act.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In this case, the claimant was discharged for losing her insurability through the employer's insurance carrier. The claimant was aware that she was required to remain insurable to retain employment. The employer learned that the claimant was involved in car accident while on company time, operating her own vehicle, in July 2015. At that time, the claimant was neither ticketed by law enforcement nor was she disciplined for her role in the accident by the employer. The employer was aware of the accident and allowed the claimant to continue working in her role, and thereafter, allowed her to voluntarily move into another position in April 2016. It is unclear why the employer did not run her driving record following the accident, or even before permitting the transfer to occur in April 2016. However, on May 26, 2016, upon running a review of the claimant's driving record, the employer determined based on an April 2015 speeding ticket in her personal time and the July 2015 accident, she was no longer insurable and discharged her.

At issue here is not whether the employer followed its policy or had good reason to discharge the claimant, but whether she was discharged for a current or final act of misconduct because the claimant was discharged on May 26, 2016 for actions that occurred in April and July 2015, and for which the employer had knowledge of at the time they occurred. In order for a claimant to be disqualified from benefits, the most recent incident leading to discharge must be a current act of misconduct in order to disqualify an individual from receiving benefits. The credible evidence presented is that the claimant continued performing work for another ten months, unaware that her employment may end unexpectedly if the employer decided she was no longer insurable. This incident must occur within a reasonable period from the discharge date, as the employer cannot on one hand argue that the conduct was so egregious that it warranted discharge instead of a lesser penalty, but then allow the claimant to continue working for almost ten months before determining she should be discharged.

Based on the evidence presented, the employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined. While the employer may have had good business reasons to discharge the claimant, misconduct under Iowa law has not been established. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

DECISION:

The June 15, 2016, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs