

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW FULLER
Claimant

HEARTLAND EXPRESS INC OF IOWA
Employer

APPEAL NO. 21A-UI-16718-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/11/21
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 July 21, 2021, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on September 22, 2021. Claimant participated personally. Employer participated by Rebekah Ackerman. Employer's Exhibits 1-3 were admitted into evidence.

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 April 10, 2020.

Employer discharged claimant on April 11, 2020 because claimant was involved in an accident with other trailers, he did not immediately report the accident, and he left his trailer next to a guard station.

Claimant worked as a full time driver for employer. Prior to April 10, 2020 claimant had not been in an accident. On April 10, 2020, claimant was in a Kellogg's lot in Atlanta, Georgia. While there, claimant was spotted by a Heartland coworker and by a guardsman as having been in an accident that damaged two other trailers.

Claimant walked around his trailer and stated he didn't notice damage. When the guard would not sign off on claimant's trailer to release it, claimant left the trailer by the guard stand.

The accident happened after 5pm. Claimant stated he attempted to call his manager and dispatch to no avail. He drove to the employer's lot nearby. On the way there, he received a call from the district manager, who'd already found out about the damage. Claimant hadn't contacted risk management – a step that is to be taken after any accident.

Employer's witness stated that a coworker witnessed the accident, and a manger saw video of the accident later. Neither party testified at the trial, and employer's sole witness could not give particulars as to the incident.

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. Here, it is believed that the claimant was involved in an accident. Claimant's testimony as to occurrences after the accident is generally credible though. It is believed claimant tried to go through the guard stand, was stopped, and dropped the trailer when the accident was pointed out. It is further believed that claimant tried to get ahold of employer after the accident through the dispatch number, but as it was staffed by a skeleton crew, claimant was unable to do so. It is further believed that claimant then drove to a safe place – the local yard for employer – before trying to contact employer again.

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 being in an accident and contacting employer after an accident. Claimant had not previously been in an accident, so would not have known procedures to follow. It was reasonable that he tried to work through dispatch to get in touch with the correct people.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant's accident does not fall under a wanton disregard of employer's interests or a deliberate violation of policies. Given the totality of the circumstances and the fact that claimant believed he was being accosted by a guard made his movement away from the area to be reasonable. As claimant had never been in an accident prior to the one in this matter and employer did not document any particulars of the accident, it is unknown the extent of damages from the accident and whether they would have been open and obvious. Employer had witnesses that might have cleared up these matters, but chose not to have them testify at the hearing. Based on the evidence and testimony presented, 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 July 21, 2021, 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

September 27, 2021
Decision Dated and Mailed

bab/mh