

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASON J NICHOLSON
Claimant

BOSS TRUCK SHOPS INC
Employer

APPEAL 15A-UI-03409-L-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/01/15
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the March 13, 2015, (reference 01) unemployment insurance decision that allowed benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 28, 2015. Claimant participated. Employer participated through human resources generalist, Steph Keezer; regional manager, Jason Anderson; sales associate, Kevin Peace; and shop mechanic, Mickey Lovett. Robert Peters was not available and did not participate.

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 shop mechanic/technician paid hourly and commission and was separated from employment on March 2, 2015, when he was discharged. His last day of work was February 26, 2015, and he was sent home pending investigation on March 1, 2015, when he reported to work. On February 26 some young women were stranded with a car tire problem. Peters told them to drive the car into shop bay three. Peters went to the store and bought the tire repair kit and brought it back to the shop. The employer's business of semi-truck and trailer repair is separate from the gas station shop where Peters bought the tire repair kit. He and Lovett performed the repair. Anderson was the supervisor coming on duty. Claimant went to the front desk to get his next job ticket and the women handed him \$20.00 to give to Peters for the part he paid for from his own funds. Claimant told them he would make sure Peters got the money. He immediately did so without telling Peace to delete a service ticket, which he had not seen. The car was still in the shop bay when he returned. Claimant started working on his job ticket and he did not see them leave. Either Peters or Lovett let the women leave without paying the ticket, if there ever was one created. It is the service writer's responsibility to make sure the ticket is paid before the customer leaves. Only a supervisor, such as Anderson, can delete a service ticket. The employer did not show claimant the video and the employer did not produce it or the service ticket for hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 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).

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

The employer's witnesses were inconsistent on a number of points; most significantly the statements indicating there was an intention to help the young women since they all have daughters, which contradicts the concern about payment of a shop bill. Claimant's recollection of the events, while uncertain at points, reasonably fits the sequence of events more credibly than the employer's witnesses, coupled by the failure to produce the video of the service desk or shop areas and the lack of documentary or video evidence a service ticket was ever created. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, it is also permissible to infer that the video and documentary records were not submitted because they would not have been supportive of the employer's position. See, *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). 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.

DECISION:

The March 13, 2015, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css