

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAUL E STOFFER

Claimant

APPEAL 17A-UI-04025-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC

Employer

OC: 03/12/17

Claimant: Appellant (1)

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

Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 29, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 5, 2017. The claimant participated personally. The employer participated through Tim Mason, district manager. Jan Nicholas, store manager, also testified for the employer.

Employer exhibits 1-26 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant quit the employment with good cause attributable to the employer or 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 delivery specialist and was separated from employment on March 13, 2017, when he quit the employment.

Continuing work was not available as a delivery specialist. Rather, the claimant was offered a position as counter clerk, at the same rate of pay he worked as a delivery specialist, and would work primarily nights and weekends instead of days as the claimant worked in the capacity of delivery specialist. The claimant declined the transfer to counter clerk because he had performed the work in the past and found it too physically taxing, and because he did not want to give up his weekends seeing his grandchildren.

The reason the claimant was offered the position as counter clerk was because the claimant had too many accidents as a delivery specialist and was no longer eligible to be a driver for the employer. As a driver, the employer monitored the claimant's driving history and would issue

points for driving infractions. The employer would often use motor vehicle record reports to supplement records (Employer exhibits 19-21). Upon receipt of 18 points in a three year period, an employee is deemed ineligible to drive for the employer (Employer exhibit 20). The claimant received the policies and training upon hire (Employer exhibit 26).

The claimant was issued 5 points (because the damage was less than \$1500) after rear-ending a vehicle while at work on September 5, 2014, while driving in rainy weather (Employer exhibit 13). The claimant was issued 4 points in response to an incident on January 19, 2015, in which a complaint was made about the claimant by another driver who used the "how's my driving" sticker on the claimant's vehicle to report he had cut off another driver (Employer exhibit 13). On January 25, 2016, the claimant electronically signed a warning stating he was at 11 points and understood if he exceeded the point value, he would not be able to continue driving for the employer (Employer exhibit 14).

The final incident, triggering the claimant to receive 10 points was an accident at work on March 9, 2017, where the claimant pulled up to a stop sign, "crept out" and then collided with a van. The claimant was cited for the accident by law enforcement and the damage exceeded \$1500. The claimant acknowledged he stopped but had pulled out too far. At a result of the accident, he accumulated 10 points, pushing him to 19 points, making him ineligible as a driver.

REASONING AND CONCLUSIONS OF LAW:

The Iowa Employment Security Act was established with the clearly stated intent that unemployment reserves be used "for the benefit of persons unemployed through no fault of their own." Iowa Code § 96.2. Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Admin. Code r. 871-24.25(27) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). While the circumstances might be considered a change in the contract of hire, the employer demoted because he had too many accidents/complaints while operating a company vehicle. The issue to address then is whether the claimant's actions leading to the demotion were for reasons that would constitute job related misconduct.

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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. 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 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. *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. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant's actions as a driver constitute misconduct, and are the reason for the demotion to counter clerk being offered.

The employer is charged under both federal and state law with protecting the safety of its employees and the general public. It has presented substantial and credible evidence that claimant was acting against the best interests of the employer and the safety of the general public by repeatedly driving negligently, as evidence through a rear-ending accident, a driver complaint of being "cut off" and engaging in an accident on March 9, 2017, which resulted in citation for failing to yield and causing over \$1500 in damage. The claimant was aware that his job as a driver was in jeopardy based on a documented warning on January 25, 2017, and future accidents could result in loss of driving privileges. Further, the claimant acknowledged he crept out too far after the stop sign, contributing to the final accident.

Since the history of driving violations would be considered misconduct due to repeated negligence, the employer's action to demote the claimant to counter clerk rather than discharge did not give the claimant a good cause reason for leaving the employment. The administrative law judge is sympathetic to the claimant's reasons for not accepting the demotion but benefits are denied.

DECISION:

The March 29, 2017, (reference 01) decision is affirmed. The claimant quit the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn