

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARVIN L WINTHER
Claimant

MONSON CONTRACTING LLC
Employer

APPEAL 16A-UI-11225-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 5, 2016, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 1, 2016. Claimant participated. Ronda Winther registered for the hearing on behalf of claimant, but she did not testify. Employer participated through payroll/human resources employee Stacy Cox.

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 an over-the-road truck driver (claimant had the required CDL) from March 13, 2013, and was separated from employment on August 4, 2016, when he was discharged.

Claimant was hired by Monson & Sons Inc. in March 2013. Effective January 1, 2016, Monson Contracting LLC leased all of the driver employees from Monson & Sons Inc. The drivers are no longer employed through Monson & Sons Inc.; it was a business decision, not a disciplinary decision. The change did not change anything beside that the drivers are now paid by a different company. When the drivers were transferred to a different payroll company, the drivers did not lose seniority or hire date. There was no gap in employment for the drivers.

The employer has a written company policy that prohibits transportation, possession, selling, exchanging of alcohol or illegal substances in the company truck. A violation of this policy may result in discharge. Claimant signed a document saying he was aware of the policy, but he did not recall reading the policy.

On August 4, 2016, while claimant was working for the employer, he was stopped by the Iowa Department of Transportation for an inspection. During the inspection, the Iowa Department of Transportation Officer asked claimant if there was any alcohol or drugs in the vehicle. Claimant

told the officer he had alcohol in the vehicle. Claimant showed the officer an unopened eighteen pack of alcoholic beer in the side box of the company truck that he had been operating. The side box must be accessed from outside the vehicle. The officer gave claimant a misdemeanor citation for the alcohol in the truck and was placed out of service for twenty-four hours. Claimant contacted Ms. Winther about what happened. Ms. Winther then contacted the employer and informed the dispatcher what was going on. The dispatcher contacted the owner of the company and the owner decided to discharge claimant for violating employer's policy. The dispatcher contacted Ms. Winther and told her that claimant was being discharged and he needed to get his stuff out of his truck. The sole reason for the discharge was the violation of the employer's policy.

Claimant has pled guilty to the citation and paid the fine. Claimant had no prior warnings for similar incidences. The employer has had one other employee that had alcohol in the vehicle and that employee was also discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy prohibiting its over-the-road truck drivers from transporting or possessing alcohol in the company truck is reasonable. Professional drivers, particularly those that drive large and/or heavy vehicles, reasonably have a higher standard of care required in the performance of their job duties to ensure public safety. That duty is evident by special licensing requirements. The employer is charged under both federal and state law with protecting the safety of its employees and the general public by ensuring employees follow safety laws while operating a company vehicle. On August 4, 2016, claimant clearly violated the employer's policy when he possessed and transported alcohol in the company vehicle. Furthermore, claimant pled guilty after receiving a citation for possessing the alcohol.

The employer has presented substantial and credible evidence that claimant had alcohol in his company vehicle and was transporting it in violation of the employer's policy. This is disqualifying misconduct even without prior warning. Benefits are denied.

DECISION:

The October 5, 2016, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs