

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**DAVID A KOHL**  
Claimant

**APPEAL NO. 17A-UI-02178-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FEEDLOT SERVICE CO**  
Employer

**OC: 01/22/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

David Kohl filed a timely appeal from the February 14, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Kohl was discharged on January 15, 2017 wanton carelessness in performing his work. After due notice was issued, a hearing was held on March 21, 2017. Mr. Kohl participated. Fred Roane represented the employer. Exhibits 1, 2 and 4 were received into evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: David Kohl was employed by Feedlot Service Company as a full-time commercial truck driver from 2015 until January 21, 2017, when Fred Roane, President, discharged him from the employment. Mr. Kohl's employment involved operating a tractor-trailer rig within a 300-mile radius of Neola, Iowa. Mr. Kohl has been a commercial truck driver for over a decade.

The incident that triggered the discharge occurred on January 14, 2017, while Mr. Kohl operated the employer's tractor-trailer on 310th Street in Fremont County. When Mr. Kohl turned from 310th Street onto the entrance ramp to Interstate Highway 29, he took the turn too fast and flipped the tractor-trailer rig on its side. The single vehicle crash was entirely attributable to Mr. Kohl's careless operation of the tractor-trailer rig. Mr. Kohl knew that he was hauling a top-heavy load. The road conditions were good. Wind was not a factor. The crash caused substantial damage to the tractor and trailer. Neither Mr. Kohl nor the employer knows whether the freight was damaged or to what extent. Mr. Kohl was not injured. Mr. Kohl promptly notified the employer of the incident. Law enforcement officers responded to the scene and arranged

for a tow truck to remove the tractor-trailer rig from the area next to the entrance ramp. The law enforcement officers prepared an incident report, but did not issue any citations.

After the January 14 crash, Mr. Roane did not own another tractor for Mr. Kohl to operate. Mr. Roane considered renting another truck for Mr. Kohl to operate, but decided against doing that. On January 22, 2017, Mr. Roane notified Mr. Kohl that he was discharged from the employment.

At the time of the discharge, the employer had not yet received any feedback from its insurer regarding any potential issues with continuing coverage of Mr. Kohl's operation of the employer's equipment.

Mr. Kohl's motor vehicle record factored in the decision to end the employment. In August 2015, Mr. Kohl was cited for operating the employer's rig at 10 miles over the posted speed limit. Mr. Kohl pleaded guilty to that offense by paying the fine in September 2015.

In making the decision to end the employment, Mr. Roane also considered an incident from February 2016, wherein damage to the rear of a tractor resulted from Mr. Kohl's attempt to back the rig into place to connect with a trailer at a rail yard. Icy conditions at the lot were a factor in the incident, as was a small rock that Mr. Kohl eventually observed on the fifth wheel. The rock prevented the fifth wheel on the tractor from properly connecting with the goose neck of the trailer.

#### **REASONING AND CONCLUSIONS OF LAW:**

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 of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The evidence in the record establishes misconduct in connection with the employment, based on the January 14, 2017 single-vehicle crash. Mr. Kohl was a seasoned commercial truck driver. Mr. Kohl knew the load he was carrying was top-heavy and that he needed to factor that into his operation of the vehicle. Mr. Kohl elected to travel at an excessive speed when turning onto the exit ramp. Mr. Kohl's reckless operation of the employer's rig caused the crash that resulted in substantial damage to the employer's rig. Mr. Kohl's actions on January 14, 2017 went well beyond ordinary negligence and demonstrated an intentional and substantial disregard of the employer's interests. Mr. Kohl's damage to the employer's equipment resulted in the employer having no rig for Mr. Kohl to operate. The evidence in the record establishes that February 2016 minor damage and the 2015 speeding conviction were minor factors in the employer's decision to end the employment.

Because the administrative law judge concludes that Mr. Kohl was discharged for misconduct in connection with the employment, he is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Kohl must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

## **DECISION:**

The February 14, 2017, reference 01, decision is affirmed, but the discharge date is corrected to January 22, 2017. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and

paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs