

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**YASSINE ELBOUJARFAOUI**  
Claimant

**APPEAL NO. 11A-UI-11925-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES**  
**REGIONAL TRANSIT AUTHORITY**  
Employer

**OC: 07/24/11**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Yassine Elboujarfaoui filed a timely appeal from the August 31, 2011, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on October 10, 2011. Mr. Elboujarfaoui participated. Randy Ross, human resources director, represented the employer and presented additional testimony through Randy McKern, transportation manager.

**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: Yassine Elboujarfaoui was employed by Des Moines Regional Transit Authority (DART) as a part-time bus operator from April 2010 until July 27, 2011, when Randy McKern, transportation manager, discharged him based on a motor vehicle accident that occurred on July 25, 2011. On July 25, Mr. Elboujarfaoui had stopped his assigned bus at a red light. There was a car in front of the bus at the intersection. While the bus was stopped, Mr. Elboujarfaoui took a drink of water, which was allowed under the employer's work rules. As the light turned green, Mr. Elboujarfaoui was in the process of putting his water bottle back in its place. During this process, Mr. Elboujarfaoui allowed the bus to move forward. The car in front did not immediately move forward in response to the green signal. Mr. Elboujarfaoui's bus collided with the stationary car in front of the bus and caused damage to the car. The employer had a written work rule that subjected drivers to immediate discharge under such circumstances. This incident was the sole basis of the employer's decision to discharge Mr. Elboujarfaoui.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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 an isolated incident of negligence on July 25, 2011, when Mr. Elboujarfaoui allowed his bus to move forward and rear-end the vehicle in front of the bus. The incident was not the result of any intention upon the part of Mr. Elboujarfaoui to drive unsafely or in a manner that was contrary to the interests of the employer. Though it was within the employer's discretion to end the employment pursuant to its policy, this isolated incident of carelessness or negligence is not sufficient to establish misconduct in connection with the employment that would disqualify Mr. Elboujarfaoui for unemployment insurance benefits. See 871 IAC 24.32(1)(a), above.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Elboujarfaoui was discharged for no disqualifying reason. Accordingly, Mr. Elboujarfaoui is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Elboujarfaoui.

**DECISION:**

The Agency representative's August 31, 2011, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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