

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY R WINTERS
Claimant

CORKERY TRANSPORTS INC
Employer

APPEAL 16A-UI-08645-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/03/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 2, 2016, (reference 01) unemployment insurance decision that denied benefits based upon misconduct. The parties were properly notified about the hearing. A telephone hearing was held on August 25, 2016. Claimant participated personally and through witness Sunshine Schultz. Employer participated through president Ross Corkery.

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 began working for employer on approximately March 17, 2016. Claimant last worked as an over the road truck driver. Claimant was separated from employment on July 6, 2016, when he was terminated.

Employer has an electronic log book that tracks the movement of its trucks. Employees are not allowed to drive while logged out of the electronic log book. Claimant was aware of this.

During June 2016, claimant was assigned to drive from Saint Paul, Minnesota to Dubuque, Iowa. Claimant exhausted the number of hours he was allowed to drive by law, so he logged out of the electronic log book and finished the route. President Ross Corkery warned claimant that if he did this again, he would be terminated.

In late June 2016, claimant sent Corkery an email stating he wanted to meet with him to discuss some issues. Claimant felt unappreciated by employer.

On or about June 28, 2016, claimant was assigned to pick up a load in Michigan and deliver it in Illinois. The load consisted of perishable food items. Claimant had to wait for eight hours for the load in Michigan. During that time, claimant became angry thinking about the fact that Corkery had not called him in response to his email. Claimant became so angry he decided to

quit his job. Instead of driving to Illinois, claimant drove back to Iowa. Claimant was logged out of the electronic log book for the entire drive back to Iowa. Claimant took his things from the truck and left it in employer's truck yard without informing employer what he had done.

After discovering the truck, Corkery called claimant and asked him what happened. At first, claimant stated he came back because of a family emergency. Eventually claimant admitted he came back because he was angry with Corkery's lack of response to his email. Corkery told claimant they could meet to discuss claimant's concerns. After some scheduling issues, the meeting was set for July 6, 2016, at 11:00 a.m. Corkery told claimant he would give him another assignment if the meeting went well.

Also after discovering the truck, Corkery had to find someone else to take the load to Illinois. The load was late and employer was fined by the customer as a result.

Claimant was scheduled to be paid on July 4, 2016. However, employer "held" claimant's paycheck to make sure that he did not take any company property with him when he cleaned out his truck.

On the morning of July 6, 2016, claimant sent Corkery a text message demanding his paycheck. Corkery informed claimant his paycheck would be deposited in his bank account the next morning and that his employment was terminated.

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.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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).

Here, claimant was terminated for refusal to perform his job duties. Claimant was assigned to deliver a load of perishable goods to Illinois, but instead drove the truck back to Iowa and dropped it off at employer's place of business without informing employer of his actions. This was done with deliberate disregard of employer's interests. Employer has established it terminated claimant for job-related misconduct.

DECISION:

The August 2, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant is deemed eligible.

Christine A. Louis
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Decision Dated and Mailed

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