

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID J BRAMON

Claimant

APPEAL NO: 13A-UI-02758-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN LOGISTICS CORPORATION

Employer

OC: 02/03/13

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Ruan Logistics Corporation (employer) appealed a representative's March 1, 2013 decision (reference 01) that concluded David Bramon (claimant) was discharged and there was no evidence of willful or deliberate misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 4, 2013. The claimant participated personally. The employer participated by Robert Beiner, Terminal Manager, and Nick Stevens, Transportation Supervisor. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 7, 2008, as a full-time driver. The claimant signed for receipt of the employer's handbook. The employer issued the claimant written warnings on March 17, 2011, and April 26, 2012, for failure to follow instructions. The employer notified the claimant that further infractions could result in termination from employment. On January 11, 2013, the employer issued the claimant a written warning and three-day suspension for hitting two fixed objects within a two-week period. The employer notified the claimant that further infractions could result in termination from employment.

On February 4, 2013, the claimant arrived at a customer's site with a load of cement. He waited while an individual removed enough snow to open the gate. The individual left a large snow drift on the drive and the claimant could not see the ditch. The individual returned and told the claimant to proceed through the approximately eighteen inches of snow. The claimant told the individual that he needed a drive plow to see the ditch. The individual told the claimant that he would tell the customer. The claimant waited and then was told to return to the employer's terminal.

The individual inaccurately told the customer that the claimant was rude to him. The customer, in turn, complained to the employer about the claimant. The customer told the employer that the claimant was not allowed on the customer's site again. The employer terminated the claimant for his rude behavior to the individual.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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 establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The claimant's and the employer's testimony is inconsistent. The administrative law judge finds the claimant's testimony to be more credible because he was an eye witness to the events for

which he was terminated. The employer could not provide any eye witnesses or statements to support its case.

DECISION:

The representative's March 1, 2013 decision (reference 01) is affirmed. The employer has not met its proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css