

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY JOHNSON
Claimant

APPEAL NO: 16A-UI-10760-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CACTUS OPERATING LLC
Employer

OC: 08/28/16
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 30, 2016, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 18, 2016. The claimant participated in the hearing and was represented by Attorney Lori Bullock. Caroline Hicks, Human Resources Director, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time DOT local truck driver for Cactus Operating from May 20, 2015 to September 2, 2016. He was discharged for violating a traffic law.

On August 31, 2016, the claimant was at the employer's Osceola office to participate in a hearing test. As he left the parking lot he passed Environmental Compliance Officer Lyle Andresen and his passenger who were entering the premises. Mr. Andresen reported to the employer that as he watched the claimant through his rear view mirror, the claimant left the parking lot at a high rate of speed, turned on to 205th Street and did not stop at the stop sign at the intersection of 205th Street and Highway 34. The claimant's supervisor contacted him approximately ten minutes after Mr. Andresen provided the information and the claimant initially denied running through the stop sign and then said he may have made a "California stop" and rolled through the intersection.

The employer does not use a progressive disciplinary policy and has a zero tolerance policy regarding any violation of any law. Its handbook also states violations will result in disciplinary action up to and including termination. The claimant had not received any previous verbal or written warnings during his tenure with this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

It is highly unlikely that the Mr. Andresen would go out of his way to report the claimant blew through a stop sign without actually observing him do so. The parties do not appear to know one another even by sight and the claimant is not aware of any issues between them. If either man had a motive to be less than forthcoming about the stop sign incident, however, it would be

the claimant as admitting he ran a stop sign would place his job and unemployment benefits in jeopardy.

That said, the claimant had never received any warnings from the employer and the employer's disciplinary policy is somewhat vague. While it states it has zero tolerance for any action in violation of the law, it also states the penalty is "up to an including termination," which certainly implies the employer can choose to levy other types of disciplinary action short of termination. The employer obviously has the right to discharge any employee for any reason or no reason at all. The question for the administrative law judge is whether the claimant's conduct disqualifies him from receiving unemployment insurance benefits; not whether or not the employer had the right to terminate his employment.

Finally, this was an isolated incident of misconduct on the part of the claimant. There is no evidence of any previous violations of traffic law or the employer's policies. While this was a serious infraction that warranted some type of disciplinary action, because it was an isolated incident of misconduct it does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The September 30, 2016, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs