

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD T BRANDON
Claimant

APPEAL NO. 15A-UI-00644-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 12/21/14
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Decker Truck Line (employer) appealed a representative's January 7, 2015, decision (reference 01) that concluded Edward Brandon (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 19, 2014. The claimant participated personally. The employer participated by Brenda McNealey, Vice President of Human Resources, and Jennifer Lawler, Safety and Workers' Compensation Coordinator. 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 October 17, 2012, as a full-time refrigerated van driver. He suffered a work-related injury on May 28, 2014. On July 29, 2014, the employer's physician placed the claimant on light duty work. The claimant worked a light duty job for the employer from July 15 through December 18, 2014. The employer's physician requested approval for left knee surgery and medical information was requested and reviewed. The medical documentation indicated the claimant had a previous left knee condition and the surgery request was denied. On December 15, 2014, without seeing the claimant, an unknown medical person wrote a release for the claimant to return to work without restrictions regarding his work injury. This letter was received by the claimant's attorney on December 18, 2014. On December 18, 2014, the claimant's last day of work, the employer told the claimant he was terminated because he could not return to work and he had no leave.

The claimant filed for unemployment insurance benefits with an effective date of December 21, 2014. The employer participated personally at the fact-finding interview on January 6, 2015, by Jennifer Lawler and Courtney Bachel.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for 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 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). On December 18, 2014, the claimant had not been absent from work. The last medical document issued on December 18, 2014, indicated he could return to work without restrictions. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The issue of whether the claimant is able and available for work is remanded for determination.

DECISION:

The representative's January 7, 2015, decision (reference 01) is affirmed. The employer has not met its proof to establish job related misconduct. Benefits are allowed. The issue of whether the claimant is able and available for work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs