

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BLAINE W CORKERY**  
Claimant

**FLYNN CO INC**  
Employer

**APPEAL 20A-UI-15646-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/27/19  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On November 23, 2020, Blaine Corkery (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated November 20, 2020 (reference 04) that denied benefits based on a finding claimant was discharged on September 3, 2020 for having too many accidents for which he was found at fault.

A telephone hearing was held on January 26, 2020. The parties were properly notified of the hearing. The claimant participated personally. Flynn Co Inc (employer/respondent) did not register a number for the hearing and did not participate.

Official notice was taken of the administrative record.

**ISSUES:**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time truck driver. Claimant began working for employer in March 2019. The last day claimant worked on the job was September 3, 2020. Claimant was discharged at that time by Bob, the plant manager

Claimant was discharged due to being involved in multiple accidents while working. Claimant was written up three times in 2019 for this reason. This included two write-ups for backing into a ditch and becoming stuck and one for backing into another truck and scratching it.

Despite having multiple accidents, claimant was called back to work the following spring of 2020. Shortly after returning to work claimant received another write-up, this time for an accident which resulted in a bent hood on a company truck.

The final incident occurred on the date of discharge. On that date, a foreman approached claimant and told him he had a gouge in his passenger side tire. Claimant was unaware of the gouge in the tire but suspects he must have hit a slab while loading and unloading cement. Claimant returned to the plant to have the tire inspected and it did have a gouge in it. Claimant was discharged shortly thereafter.

Claimant testified the accidents he was involved in were due to misjudging distance. He testified that he drove carefully but that he had to work fast.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the decision dated November 20, 2020 (reference 04) that denied benefits based on a finding claimant was discharged on September 3, 2020 for having too many accidents for which he was found at fault is AFFIRMED.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2).

Claimant's actions were not willful or deliberate. However, the administrative law judge finds his carelessness or negligence was of such a degree of recurrence as to manifest equal culpability. The administrative law judge recognizes that accidents are bound to happen from time to time. However, claimant had five accidents of a similar nature over the course of his relatively brief employment. The administrative law judge cannot find that five such incidents over that short timeframe are mere isolated instances of inadvertency or ordinary negligence. The fact that claimant was unaware of the gouge in his tire until his foreman pointed it out to him supports a finding that claimant was not as careful and watchful as he should have been when working. For these reasons, the administrative law judge finds claimant's discharge was for disqualifying misconduct. Benefits are denied.

**DECISION:**

The decision dated November 20, 2020 (reference 04) that denied benefits based on a finding claimant was discharged on September 3, 2020 for having too many accidents for which he was found at fault is AFFIRMED. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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February 12, 2021  
Decision Dated and Mailed

abd/mh

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.