

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KEVIN J DUBON CABRERA**  
Claimant

**FISHER TRACKS INC**  
Employer

**APPEAL NO. 17A-UI-11420-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/15/17**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 3, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 29, 2017. Claimant participated personally. Employer participated by Aleasa Miller and Sam Fisher.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 13, 2017. Employer discharged claimant on October 13, 2017 because claimant had been involved in a completely avoidable accident while driving a company truck on September 30, 2017.

On September 30, 2017, claimant was driving a company truck equipped with tall equipment. Claimant stated that he did not know the specific height of the truck. The truck was 11 feet six inches tall. Claimant was driving with a couple co-workers in Geneseo, Illinois, a town with which claimant was unfamiliar. Claimant was a few minutes behind the other workers, and used the GPS system to guide him to the work site.

Claimant stated that he was not looking at road signs as he was focused on the GPS guidance. Four road signs indicated that tall vehicles were not to proceed down the road, and a separate sign indicated that the low bridge had a ten foot height. Claimant proceeded under the bridge and caused large damage to company equipment as it struck the top of the bridge. Claimant received a citation and pleaded guilty to disobeying traffic control devices.

Claimant initially stated that the action was not his fault. Employer researched the issue and believed claimant was grossly negligent by not obeying the signs. Employer had not issued any warnings to claimant prior to his termination.

## REASONING AND CONCLUSIONS OF LAW:

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(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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning mishandling of company property. The last incident, which brought about the discharge, constitutes misconduct because claimant admitted he was not paying attention to multiple warning signs alerting drivers that they were not to go under a bridge with tall vehicles. Even if claimant did not know the particular height of his vehicle, he should have seen signs and acted with caution. He did not do this. This is grossly negligent on the part of the claimant, and a warning is not necessary prior to terminating for gross negligence. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated November 3, 2017, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

---

Blair A. Bennett  
Administrative Law Judge

---

Decision Dated and Mailed

bab/scn