

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLIFFORD W WILLIAMS
Claimant

APPEAL NO. 15A-UI-05118-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DURHAM D & M LLC
Employer

OC: 03/15/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Clifford Williams filed a timely appeal from the April 21, 2015, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on June 5, 2015. Mr. Williams participated. Matthew Awkerman represented the employer. Exhibit A was received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clifford Williams was employed by Durham D & M, L.L.C., as a part-time school bus driver from 2012 until April 7, 2015 when he quit in lieu of being discharged from the employment for repeated failure to drop students at designated offloading sites. The employer contracts with the Pleasant Valley Community School District to transport students to and from school. The District, in discussion with Durham, designates the bus stops where students will be loaded or off-loaded. The District designated the bus drop off sites in part to provide students, their parents, school officials and other interested parties with a predictable bus route. The District also designates bus stops as a means of have a clear point in the students' transition to and from school where the District's responsibility and liability for the student begins and where it ends.

Mr. Williams had been absent from work from the start of spring break in mid-March until he returned from a leave of absence on April 6, 2015. After spring break ended, and before Mr. Williams returned from his leave, the employer had a substitute driver driving Mr. Williams' route. The substitute driver picked up and dropped off students at the stops designated in the route plan approved by the employer and the school district. The substitute bus driver brought to the employer's attention that students were indicating that Mr. Williams dropped the students at places other than those designated on the route plan. The employer also received a complaint from a parent regarding why the substitute driver was utilizing different stops than

those used by Mr. Williams. The information provided by the substitute bus driver and the concerned parent prompted the employer to review GPS records regarding Mr. Williams operation of his assigned bus. The employer found at least 34 instances, involving eight different unauthorized stops, where Mr. Williams had deviated from the route plan.

The employer had issued prior reprimands to Mr. Williams for deviating from the route plan stops. The first reprimand was issue in January 2014. Mr. Williams needed to follow a circular route to leave a particular residential area without backing up the bus. The route plan called for dropping students off at the beginning of the circular route. Mr. Williams elected to drop one or more students in front their homes as he traveled the circular route. The employer directed Mr. Williams not to do that. The employer issued a second reprimand to Mr. Williams in October 2014, after Mr. Williams stopped to drop off a high school student who was not authorized to ride the bus. In that instance, the high school principal had been accompanying Mr. Williams on his route.

The employer met with Mr. Williams twice monthly to discuss issues related to his bus route. Though Mr. Williams had continued to drop students at non-designated sites, he did not mention this to employer or bring any concerns about the route plan to the employer's attention.

The employer met with Mr. Williams on April 7, 2015 for the purpose of discharging him from the employment. Mr. Williams had the assistance of a union representative who advised the employer that Mr. Williams was electing to resign from the employment.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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 this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s) alone. The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also Greene v. EAB, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In Gilliam v. Atlantic Bottling Company, the Iowa Court of Appeals upheld a discharge for misconduct and disqualification for benefits where the claimant had been repeatedly instructed over the course of more than a month to perform a specific task and was part of his assigned duties. The employer reminded the claimant on several occasions to perform the task. The employee refused to perform the task on two separate occasions. On both occasions, the employer discussed with the employee a basis for his refusal. The employer waited until after the employee's second refusal, when the employee still neglected to perform the assigned task, and then discharged employee. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990).

The evidence in the record establishes misconduct in connection with the employment based on Mr. Williams' repeated deviation from the employer's repeated directive that he adhere to the designated stops on the approved route plan. The employer and the District had reasonable bases for requiring Mr. Williams and drivers to stick to the route plan. Mr. Williams did not have a reasonable basis for consistently deviating from the route plan. Mr. Williams' desire in some instances to shorten students' journey from the bus to home would have been reasonable, if the employer had not repeatedly reinforced the need to follow the route plan. Under the circumstances, Mr. Williams' repeated deviation from the route plan was unreasonable. Mr. Williams' conduct constituted misconduct in connection with employment.

Because the administrative law judge concludes that Mr. Williams was discharged for misconduct, Mr. Williams is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits paid to Mr. Williams.

DECISION:

The April 21, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account will not be charged

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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