

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT J GREGSON

Claimant

APPEAL 16A-UI-04589-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROP PRODUCTION SERVICES INC

Employer

OC: 03/27/16

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 11, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2016. The claimant, Brett J. Gregson, participated. The employer, Crop Production Services, Inc., participated through Todd Richardson, Hearing Representative, and Dean Duncan, Plant Manager. Employer's Exhibit A, Pages 1 through 11 were received and admitted into the record without objection.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a custom applicator from May 12, 2015 until this employment ended on March 28, 2016, when he was discharged for failing to promptly report an accident and damaging a company vehicle.

Claimant's last work shift ended on March 25, 2016 at 5:00 p.m. Around 8:00 p.m. that evening, he was involved in a motor vehicle accident while driving his company truck. This accident totaled the truck. Claimant did not report the accident until 8:30 a.m. the following day. He told Duncan that he did not want to bother him by reporting it earlier. Claimant did not report the accident to the police and he did not go to the hospital on March 25 to seek medical attention. The employer maintains a policy requiring "all accidents regardless of fault or severity are reported as soon as possible." (Employer's Exhibit A, Page 6.)

Claimant was never warned for failing to promptly report an accident in the past. While he was aware that he needed to report the accident, he was not aware of a specific time frame within which he needed to report. Claimant believed he was allowed to use his company vehicle freely, as other employees did this. Claimant had been in training to be a salesperson prior to his accident and salespeople had greater freedom with their company vehicles.

REASONING AND CONCLUSIONS OF LAW:

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

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. This is claimant's first incident of failing to promptly report a vehicle accident. The employer did not provide any evidence about any harm that was caused by claimant's twelve-hour delay in reporting the accident to Duncan. Claimant's decision to wait until the following day to report the accident to Duncan is not unreasonable, particularly given that he had a concussion and was shaken up from the accident. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The April 11, 2016 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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