IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ELMER R BUFORD Claimant **WRENCH N GO INC** Employer	**APPEAL 17O-UI-03767-DL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/10/16** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 29, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. In an appeal decision by ALJ Coe on March 3, 2016, the unemployment insurance decision was reversed and the claimant allowed benefits. The employer appealed to the EAB and on March 29, 2016, remanded for a new hearing. The employer did not appear and the March 3, 2016, was adopted on April 21, 2016. On March 16, 2017, the EAB found the employer's appeal untimely. On April 4, 2017, the EAB reconsidered and remanded for a new hearing with the provisos that the March 16, 2017 ALJ (sic) decision is not vacated and that claimant is subject to the rule of two affirmances Iowa Admin. Code r. 871-23.43(3). The parties were properly notified about the hearing. A telephone hearing was held on May 2, 2017. Claimant participated. Employer participated through human resources generalist Jenna Maloney and corporate DOT administrative specialist Krista Schult. Jackie Nolan of Employers Unity represented the employer.

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 as a full-time non-CDL class D-2 (chauffers' license) driver for Wrench N Go fka Alter, from 2008, through January 11, 2016. He drove an 18-foot flatbed truck without air brakes in the weight category of 26,000 pounds and under. From a report generated on January 7, 2016, the employer discovered he failed to report two speeding tickets in his private vehicle on April 12, 2015. Both were on the same day in the same county, one was 12 mph over a 70 mph zone and the other was 24 mph over in a 70 zone on I-35. He did not disclose those to Juhl. The prior year's report was obtained on March 20, 2015. On March 18, 2015, he signed for a policy in the company's DOT manual that the company runs annual motor vehicle reports for CDL drivers each year and requires them to immediately disclose moving violations in a commercial or personal vehicle to a supervisor. The employer did not provide a copy of this or the previous policy at hearing. He asked Schult about whether he should disclose any

violations since he was not a CDL operator and his understanding was that he need not. Claimant's supervisor was facility manager Jacob Juhl, who did not participate at hearing. The employer had not previously warned claimant his job was in jeopardy for any similar reasons.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

> **Causes for disqualification.**
> 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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct "must be substantial" to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Id.* (citation omitted). …the definition of misconduct requires more than a "disregard" it requires a "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." Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

Iowa Admin. Code r. 871-24.32(4) provides:

> (4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge.

> 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Whether an employee violated an employer's policies is a different issue from whether the employee is disqualified for misconduct for purposes of unemployment insurance benefits. *See Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000) ("Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." (Quoting *Reigelsberger*, 500 N.W.2d at 66.)).

The conduct for which claimant was discharged was merely a misunderstanding of the employer's policy and Schult's response to his inquiry. Inasmuch as employer did not provide a copy of the policies and 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. 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.

DECISION:

The January 29, 2017, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs