

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SETO K AMOUZOU
Claimant

SCHNEIDER NATIONAL CARRIERS INC
Employer

APPEAL 17A-UI-03604-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 02/26/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 28, 2017 (reference 05) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2017. The claimant, Seto K. Amouzou, participated personally. Interpreter services were provided to claimant by CTS Language Link. The employer, Schneider National Carriers Inc., was represented by Thomas Kuiper and participated through witnesses Christopher Henderson and John Fellows.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a driver. Claimant's job duties included hauling freight from the employer to various vendors. Claimant was employed from November 28, 2016 until March 3, 2017 when he was discharged from employment. Mr. Henderson was claimant's immediate supervisor.

This employer has a written policy in place regarding driver safety. Claimant was made aware of the policy when he was first hired and trained. Claimant was aware that unsafe driving could result in his discharge from employment.

The final incident occurred on March 2, 2017. Mr. Fellows rode with the claimant and observed claimant's driving. Claimant passed this evaluation for safe driving. Following this evaluation Mr. Fellows followed claimant in a separate vehicle to continue observing his driving without the claimant's knowledge. Mr. Rick Roe assisted Mr. Fellows during this part of the evaluation. Claimant was driving north on Coral Ridge Highway when he made a left turn from the center lane. There was a left turn lane that claimant should have drove into in order to make the left

turn, but he did not. Mr. Fellows was driving behind the claimant and was able to block traffic so that claimant did not cause any accidents. Mr. Fellows brought this matter to Mr. Henderson's attention that same date. Mr. Roe confirmed with Mr. Henderson that he witnessed claimant make a left turn from the center lane as well. Claimant was discharged the following day for violation of the employer's safe driving policy. Claimant denied that he made a left turn from the center lane but agrees that it would be unsafe to make a left turn from a center lane while failing to use the left turn lane.

Claimant had received previous discipline during the course of his employment. Claimant had received a written warning on February 24, 2017. This involved an incident where claimant was pulled over by police while he was driving in the center of the road. Claimant did not receive a traffic citation from the police officer during this incident; however, he received a written warning from the employer for unsafe driving. Claimant was made aware at this time that he could be subject to discharge if his unsafe driving continued to occur.

Claimant also received a verbal warning for failing to drive safely in the vendor parking lots. It had been reported that claimant was failing to drop his trailer properly in the vendor parking lots.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the Administrative Law Judge finds that Mr. Fellows' testimony is more credible than the claimant's testimony and that claimant did make a left turn from the center lane while driving on Coral Ridge Highway.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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). 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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate

disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Prior to this discharge claimant had received two previous warnings for unsafe driving. Claimant's job duties included following the policies and procedures the employer had in place, as well as the rules of the road to ensure his driving was safe. Claimant was aware that making a left turn from the center lane on Coral Ridge Highway was an unsafe driving act. Claimant did make a left turn from the center land on Coral Ridge Highway. This was an intentional act.

The employer has a right to expect that employees will not jeopardize their own safety and the safety of others by driving unsafely. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The March 28, 2017 (reference 05) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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