

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**RONALD J NEWMAN**  
Claimant

**RAILCREW XPRESS LLC**  
Employer

**APPEAL 20A-UI-00145-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/08/19  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the December 31, 2019 (reference 01) unemployment insurance decision that allowed benefits to the claimant based upon his discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on January 27, 2020. The claimant participated personally. The employer, Railcrew Xpress LLC, participated through witnesses Mary Steen and Danielle Powers. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?  
Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a long haul driver from November 2, 2016 until December 5, 2019. Claimant's direct supervisor was Mary Steen. His job duties included transporting railroad crew members.

The employer's handbook includes a written policy requiring employees to report accidents or damage to company vehicles. Claimant received a copy of the policy.

On December 2, 2019, at approximately midnight, the claimant became lost when he was driving. He heard a "click" when driving and the van would not continue to drive. He got out of the vehicle and determined he had a flat tire to the left rear of the van. He contacted Ms. Steen and reported that he was lost and that the van had a flat tire. He asked her to have another driver come to get him. Claimant was distraught when he contacted Ms. Steen. Claimant did

not inspect the entire van before it was towed from the scene because it was dark. Claimant was unaware that the front fender of the van was damaged as well.

The employer learned that the fender was damaged after the van was towed to a repair shop. The camera on the van showed 12 seconds of video footage of the claimant coming to a forceful stop. The claimant did not back into any structure. The employer believed that the claimant ran over something, causing the damage to the van. Claimant was discharged on December 5, 2019 for failure to report the front fender damage to the van and pursuant to the employer's progressive disciplinary policy. The claimant had received a final written warning on June 27, 2019 for distracted driving.

Claimant has received benefits of \$552.00 for the four weeks he has filed weekly-continued claims for benefits between December 8, 2019 and January 4, 2020. The employer participated by telephone in the fact-finding interview and provided detailed information about the separation from employment.

### **REASONING AND CONCLUSIONS OF LAW:**

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

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.

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). 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). 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).

Insubordination is not considered misconduct if the claimant's actions or inactions were reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). See also *Boyd v. Iowa Dep't of Job Serv.*, 377 N.W.2d 1 (Iowa Ct. App. 1985).

The employer's policy to report damage to a company vehicle is certainly reasonable. However, in this case, the claimant was driving at night and it was dark. He heard a "click" but did not strike any other vehicle or structure. He inspected the vehicle and believed he found the problem, a flat tire. When he saw the flat tire, he stopped his inspection and reported the damage to his employer. His failure to continue inspecting the vehicle at midnight when it was dark was reasonable considering he had already reported to the employer there was damage to the van and there was no structure that the claimant hit with the front of the vehicle that would have prompted an inspection to that area. As such, the claimant's failure to inspect and report fender damage to the vehicle, given these circumstances, is not considered substantial misconduct.

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. Because benefits are allowed, the issue of overpayment is moot. The employer's account may be charged for benefits paid.

**DECISION:**

The December 31, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/scn