

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LARRY D DEVOSS**

Claimant

**APPEAL NO. 12A-UI-06161-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GREATWIDE DEDICATED TRANSPORT II**

Employer

**OC: 04/29/12**

**Claimant: Respondent (5)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 18, 2012, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 20, 2012. Claimant participated. Steve Stoffel represented the employer.

**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: Larry Devoss was employed by Greatwide Dedicated Transport II as a full-time over-the-road truck driver from 2001 until March 8, 2012, when the employer discharged him from the employment. On January 17, 2012, Mr. Devoss was operating the employer's tractor-trailer when he hit a patch of ice and slid off the road. The employer's truck rolled over and Mr. Devoss suffered injury. Mr. Devoss was off work while he recovered from his injury.

The employer had a written policy that subjects employees to discharge from the employment if they are in a rollover accident while operating the employer's truck. Two days after the freak accident that caused injury to Mr. Devoss and damage to the employer's truck, Steve Stoffel, operations center manager, submitted an "exemption report" in an attempt to preserve Mr. Devoss' employment. Mr. Devoss had been a conscientious driver. Mr. Stoffel's attempt to preserve Mr. Devoss' employment was rejected by the employer. A week after the rollover accident, Mr. Stoffel notified Mr. Devoss that he was discharged from the employment. At the time of the discharge, Mr. Devoss was still recovering from his injury. Mr. Devoss was released to return to work on March 8, 2012 and waited until his medical release and after he ceased receiving workers' compensation benefits to establish a claim for unemployment insurance benefits in April 2012.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

871 IAC 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.

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). 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).

The evidence in the record establishes that Mr. Devoss was discharged in response to a freak winter accident over which he had no control. There was no misconduct on the part of Mr. Devoss. Mr. Devoss was discharged for no disqualifying reason. Accordingly, Mr. Devoss is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Devoss.

**DECISION:**

The Agency representative's May 18, 2012, reference 01, decision is modified only to correct the separation date. The separation occurred during the week of January 22-28, 2012, not in April 2012. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw