

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAWRENCE KLINE
Claimant

SENECA TANK INC
Employer

APPEAL 21A-UI-23836-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/12/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Lawrence Kline, filed an appeal from the October 18, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion he was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 16, 2021. The claimant participated and testified. The claimant was represented by Nathan Boulton, attorney-at-law. The employer participated through Director of Human Resources Caleb Cork. Exhibits 1 and 2 were received into the record.

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:

The claimant worked as a full-time yard jockey / shop assistant from October 16, 2006, until September 8, 2021, when he was discharged. The claimant reported directly to Branch Manager Near Wallace.

The employer has an employee handbook. The employer's employee handbook lists actions which can result in disciplinary action up to and including termination. The policy lists "damaging company property deliberately or through carelessness" and "violating safety policies and procedures" as such grounds. The employer provided a copy of this policy. (Exhibit 1)

The employer also had procedures for backing in and pulling out issued on May 4, 2015. The guidelines state that employees are to use a spotter. The guidelines consist of five provisions after numeric bullet points. The first bullet point states a driver will get a spotter to watch the vehicle until it is "safely [sic] in shop and parked." The second bullet point states that an employee will take certain precautions when taking a vehicle "inside." The third bullet point states "As [sic] unit is moved in or out, spotter will keep visual and voice contact at all times."

The fourth bullet point instructs the spotter to give certain voice commands to the driver depending on the presence of a danger to a building, object or person in the drive path. The final bullet point specifically requires any drive leaving the shop to signal for a spotter to navigate them out of the building. The employer provided a copy of this provision. The claimant testified that these provisions were required only when a driver was pulling in and out of the shop. (Exhibit 1)

On June 14, 2021, the claimant reported some pain in his arm to Director of Human Resources Caleb Cork. Mr. Cork discovered the claimant had been exceeding his weight restrictions and observed the claimant should remove items from a cabinet to stay within his restrictions. The claimant stated he did not have time to do that.

On June 24, 2021, the claimant received a written warning for the incident that occurred on June 14, 2021. The written warning stated if “the claimant has any future issues with insubordination or safety violations in the future, then [he] may face disciplinary action up to and including termination. [The claimant’s] job is in jeopardy.” (Exhibit 2)

At 2:10 p.m. on September 1, 2021, Mr. Wallace requested the claimant to move a trailer from the North lot to the street side of the facility for a vendor to pick it up. The claimant went out and hooked up the trailer around 2:25 p.m. The claimant had two paths he could have taken out of the lot. One moved through a typically congested area of the employer’s lot. The other would take the claimant through an area navigated by the employer’s neighbor Dee Zee at around 3:00 p.m. The claimant decided to take the former route to avoid the traffic because Dee Zee drivers typically were not defensive drivers. The claimant also elected not to request a spotter because he did not want to pull them away from assigned tasks. The claimant took too sharp of a turn and damaged a parked vehicle. The employer provided notes generated by the claimant, Mr. Wallace and Mr. Cork after the accident occurred. (Exhibit 2)

On September 8, 2021, Mr. Wallace and Mr. Cork issued the claimant a termination notice. The termination notice reasoned the claimant violated the employee handbook by “(1) damaging company property deliberately or through carelessness, and [by] violating safety policies or procedures.” The termination notice observes the claimant’s accident on September 1, 2021, resulted in \$26,133.79. It states the claimant acknowledge he should have asked for a spotter and used the North driveway instead of using the congested area he did. The termination notice then states this incident caused claimant’s termination because he has “had a number of safety violations and was on his final warning for safety violation from June 24, 2021.” The employer provided a copy of the claimant’s termination notice. (Exhibit 1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to non-disqualifying conduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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).

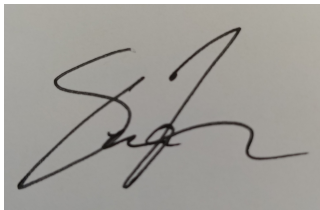
The administrative law judge finds specific findings of fact credibility determinations of the circumstances of the accident on September 1, 2021, are not necessary to resolve to issue a

ruling. He finds the employer has failed to show the claimant engaged in misconduct as defined by the act. Mr. Cork conceded the claimant's actions on September 1, 2021, could not be construed to be "intentional or deliberate." While carelessness can result in disqualification, it must be "of such degree of recurrence" as to demonstrate substantial disregard for the employer's interests.

No such finding can be made here because the employer suggests the only other occurrence was not even a vehicular accident. Mr. Cork conceded the employer was not aware of any other accidents the claimant had on his record. The administrative law judge finds this past discipline to be too dissimilar to place the claimant on notice to specific vehicular safety practices. Even if the claimant had been previously warned for past accidents, the administrative law judge is skeptical Iowa courts would find the record he supports a finding of misconduct. "The misconduct legal standard requires more than reoccurring acts of negligence in disregard of the employer's interests." Greenwell v. Emp. Appeal Bd., 879 N.W.2d 222, 228 (Iowa Ct. App. 2016) (finding three accidents in a company van was not disqualifying absent evidence of substantial disregard). Benefits are granted.

DECISION:

The October 18, 2021, (reference 01) unemployment insurance decision is reversed. Benefits are granted, provided the claimant is otherwise eligible.



Sean M. Nelson
Administrative Law Judge
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December 29, 2021
Decision Dated and Mailed

smn/kmj