

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES L SKINNER
Claimant

ANTHONY PIT & LAGOON INC
Employer

APPEAL 19A-UI-09428-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/03/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On November 29, 2019, James L. Skinner (claimant) filed an appeal from the November 26, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Anthony Pit & Lagoon, Inc. (employer) discharged him for conduct not in the employer's best interest. The parties were properly notified about the hearing. A telephone hearing was held on January 14, 2020. The claimant participated personally and was represented by John M. Loughlin, Attorney. The employer participated through Neal Anthony, Owner. The claimant sent documents to the Appeals Bureau approximately an hour before the start of the hearing, but did not send them to the employer and they were not received by the administrative law judge until after the record had closed. The documents were not admitted 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 was employed part-time as a Driver for Neal Anthony beginning in the fall of 2017. The claimant worked for the employer effective January 1, 2018 when Anthony formed the company. The claimant was separated from employment on November 7, 2019, when he was discharged.

The claimant has a physical impairment which can affect when he is available to work and his ability to drive. As a result, he has worked in a substitute capacity for the employer. While the vast majority of his jobs have been local routes that did not require overnight stays, the claimant had taken over-the-road loads that have required overnight stays in the past. The claimant requested to operate vehicles with only certain engines which are easier to operate with his prosthetic leg.

The claimant's last day worked was Monday, November 4, 2019. On November 7, Tanner, Anthony's son and Dispatcher, notified the claimant that he would be scheduled an over-the-road route for Friday, November 8, which would require an overnight stay into Saturday. The

claimant asked if his preferred tractor, 209, was available. Tanner reported that tractor 151, which had the same engine as 209, was available. The claimant refused to operate 151 and when asked why, he merely stated he was "picky." (Claimant's Testimony) Tanner then asked the claimant if he would take the load. The claimant declined. Tanner informed the claimant if he was not going to take the load, he did not need to return to work. The claimant asked if he was being fired after being force dispatched. Tanner then asked the claimant to turn in his fuel cards because his employment had ended.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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 the 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 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has an interest in requiring its employees to follow reasonable instructions in the performance of job duties. The claimant was assigned work that was within the scope of his normal job duties and did not violate his request for reasonable accommodation. The claimant refused to perform the job tasks and was on notice that refusal to perform the work would result in his discharge. The claimant still declined to perform the work as instructed which is insubordination.

The claimant contends he refused the work due to issues with his leg. However, the claimant, who had been allowed to decline work in the past due to his leg, did not report the issue to the employer when refusing the load. The only reason the claimant gave the employer as to why he was refusing was that he could not have his preferred tractor and he was picky. The employer reasonably made its decision to assign the load and discharge for refusal based on the information the claimant provided at the time of the incident. The claimant's conduct is disqualifying even without prior warning. Benefits are denied.

DECISION:

The November 26, 2019, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

A handwritten signature in blue ink, reading "Stephanie R Callahan", with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

January 17, 2020
Decision Dated and Mailed

src/rvs