

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON C SHOAFSTALL
Claimant

APPEAL NO. 15A-UI-01590-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS PAWN INC
Employer

**OC: 01/11/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Brandon Shoafstall filed a timely appeal from the January 27, 2015, reference 01, decision that disqualified him for benefits. After due notice was issued, a hearing was held on March 5, 2015. Mr. Shoafstall participated. Brian Chaney, General Manager, 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: The claimant was employed by Express Pawn as the full-time manager of the employer's Ames pawn shop from June 2014 until January 13, 2015, when the employer discharged the claimant for using for personal transportation purposes a borrower's van that was being held as collateral for a loan. The claimant had come to the employment with experience as an assistant manager with another pawn establishment. The claimant knew that one of the most basic rules of the pawn business was that collateral held as collateral on a loan to a borrower in good standing on the loan remained the property of the borrower and was not to be used by the store staff. The claimant elected to use a borrower's van as personal transportation on three occasions during inclement weather to get from the employer's store to the claimant's residence and back. The claimant's personal vehicle was not working at the time. The claimant did not ask permission of the employer before using the borrower's van, but did seek permission from the borrower. The borrower had insurance on the van. The claimant assumed his own insurance would cover his operation of the van. The conduct came to the employer's attention on or about January 5, 2015. When the employer questioned the claimant about the matter, the claimant admitted to using the van.

In discharging the claimant, the employer also took into consideration the claimant's neglect of an Amazon.com sales account, which neglect resulted in Amazon.com barring the employer, at least temporarily, from online sales through Amazon.com. The claimant had used his expertise from another employment to spearhead setting up an Amazon.com sales account for Express

Pawn. The claimant then failed to timely respond to customer complaints in connection with the account, which led to Amazon.com locking the sales account. Amazon.com also locked the account because the employer was using the account to sell merchandise from multiple stores, in apparent violation of Amazon.com terms of use.

REASONING AND CONCLUSIONS OF LAW:

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).

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).

The weight of the evidence establishes that the claimant knew that basic pawn practices prohibited him from converting a borrower's collateral, in this case a van, to the claimant's personal use. The claimant's conduct unreasonably exposed the employer to financial liability on multiple fronts. Had the van broken down while the claimant was operating it, the employer would have been exposed to liability for the repairs. Had the van been involved in a traffic accident while the claimant was operating it, the employer would have been exposed to financial liability. While the claimant assumed his own car insurance would cover his operation of the borrower's van, a reasonable person would conclude otherwise. While the borrower had at least liability insurance, the employer may still have been exposed to liability for damage to the van or other financial liability. While the claimant establishes inclement weather and his vehicle being inoperable as excuses for using the borrower's van, the claimant had other options, such as calling a cab. The weight of the evidence also establishes some measure of neglect concerning the Amazon.com account, but the evidence is insufficient to establish a pattern of neglect. The claimant's personal use of the borrower's van was sufficient to establish conduct that violated the standards of conduct the employer reasonably expected of the claimant.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for misconduct. Accordingly, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer's account shall not be charged for benefits.

DECISION:

The January 27, 2015, reference 01, decision is affirmed. The claimant was discharged for misconduct. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit allowance, provided he meets all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs