

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D MACKEDANZ
Claimant

APPEAL NO. 09A-UI-07196-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID CONTINENT TRUCKING CO
Employer

**Original Claim: 04/12/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 5, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on June 4, 2009. Claimant Michael Mackedanz participated. Paul Cromwell, Safety and Risk Manager, represented the employer and presented additional testimony through dispatchers Joe Seufert and Jeff McCarville. Exhibits A and 1 through 20 were received into evidence.

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: Michael Mackedanz was employed by Mid Continent Trucking Company as a full-time over-the-road truck driver from April 18, 2008 until April 10, 2009, when Paul Cromwell, Safety and Risk Manager, discharged him from the employment.

The employer gets loads of freight through freight broker Freemont Contract Carriers, Inc. (FCC).

The final incident that triggered the discharge occurred on April 9, 2009, when Mr. Mackedanz delivered an FCC load late to its destination in Fremont, Nebraska. The load was due at 7:00 a.m. and Mr. Mackedanz delivered the load at approximately 3:00 p.m. Mr. Mackedanz's late delivery of the load caused a production plant to shut down production as it waited for the load. Mr. Mackedanz's late delivery of the load strained the relationship between Mid Continent Trucking Company and FCC and caused both companies embarrassment and potential loss of business. The load originated in Southard, Oklahoma. Mr. Mackedanz had been assigned the load at noon on April 8, 2009 and was told at that time that the load was a "hot" load, meaning it had to be delivered by the designated time. Mr. Mackedanz assured FCC personnel that he had sufficient driving hours available to legally haul and deliver the load on time.

Mr. Mackedanz was assigned an earlier load to haul from Cherokee, Iowa, to Oklahoma City. Mr. Mackedanz was done with that load at approximately 8:00 a.m. on April 8. Mr. Mackedanz arrived in Southard, Oklahoma at about 8:00 p.m. on April 8. According to Yahoo Maps, the

distance from Oklahoma City to Southard is 86 miles, or an hour and a half drive. In other words, according to Mr. Mackedanz's log book, it took Mr. Mackedanz approximately 12 hours to get from Oklahoma City to Southard, Oklahoma. Mr. Mackedanz was done collecting the new load in Southard, Oklahoma at 8:54 p.m. Mr. Mackedanz then had to take his trailer to a repair facility. Mr. Mackedanz was finished at the repair facility at 11:52 p.m. on April 8. Mr. Mackedanz drove to Holton, Kansas, where, at 1:00 a.m. he parked his truck and went to sleep. According to Mr. Mackedanz's log book, at 11:00 a.m. on April 9, Mr. Mackedanz drove from Holton, Kansas to Fremont, Nebraska. According to Yahoo Maps, the distance from Holton, Kansas to Fremont, Nebraska is 174 miles, a three-hour drive. According to Yahoo Maps, the distance from Southard, Oklahoma, to Fremont, Nebraska, is 502 miles, a drive of eight and one-half hours.

According to Mr. Mackedanz's log book, prior to sleeping from 1:00 a.m. to approximately 11:00 a.m. on April 9, Mr. Mackedanz had most recently slept from 5:00 p.m. April 7 to 5:00 a.m. April 8.

The employer had reprimanded Mr. Mackedanz on March 31, 2009 for delivering and picking up loads late. In August 2008, the employer reprimanded Mr. Mackedanz for breaking the seal on a load in violation of the employer's established policy.

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 weight of the evidence indicates that Mr. Mackedanz was negligent in delivering the load late on April 9, 2009. The evidence is insufficient to establish, by a preponderance of the evidence, that Mr. Mackedanz intentionally misled the employer in connection with the late load. While the evidence establishes a prior reprimand for late delivery or pick up of assigned loads, the evidence does not establish negligence so recurrent as to indicate a willful and wanton disregard of the employer's interests.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Mackedanz was discharged for no disqualifying reason. Accordingly, Mr. Mackedanz is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Mackedanz.

DECISION:

The Agency representative's May 5, 2009, reference 01, decision is affirmed. 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.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw