

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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Appeal Number: 05A-UI-05712-SWT
OC: 01/09/05 R: 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 20, 2005, reference 06, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on June 15, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Mike McMurrin participated in the hearing on behalf of the employer with a witness, Mike Sturtz.

FINDINGS OF FACT:

The claimant worked as a truck driver for the employer from February 21, 2005 to May 4, 2005. The job involved hauling construction material to construction sites. He was informed and understood that under the employer's work rules, truck drivers were to wear hard-soled shoes, hardhat, safety vest, and safety glasses whenever they exited their truck at a construction site.

The claimant had been counseled in the past because he did not always wear his safety equipment.

On April 26, 2005, the claimant exited his truck to speak to the job superintendent without all of his safety equipment. The superintendent complained to the employer. The claimant received a warning from the owner that he had to always wear his safety equipment at the job sites. The claimant complied with this warning.

On May 3, 2005, the claimant had a discussion with his supervisor complaining about not getting enough hours and not being provided insurance coverage. On May 4, 2005, the owner informed the claimant that he was being terminated. The owner stated that the claimant was a bad apple and would "spoil the barrel." The final incident that led to the claimant's termination was his complaint to his supervisor the previous day. The employer also considered the claimant's past history of safety violations in discharging him.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

871 IAC 24.32(1)a, (8) provide:

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).

(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.

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. When the employer was first asked what the last incident was, he referred to the April 26 incident for which the owner gave the claimant a warning. Later, the owner said he had witnessed the claimant outside of his truck at a job site without safety equipment the day before his termination. No reasonable explanation was provided as to why the owner did not say that in the first place. The claimant testified that after he was warned on April 26, he complied with the warning. The claimant's testimony was more credible than the employer's on this point. Therefore, the final act which caused the claimant's termination was his complaint about insurance and pay, which does not constitute work-connected misconduct.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated May 20, 2005, reference 06, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kjf