

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J BLOOD
Claimant

APPEAL NO: 09A-UI-18207-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FTS TRUCKING LLC
Employer

OC: 01/25/09
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's November 24, 2009 decision (reference 02) that concluded he was not qualified to receive benefits, and the employer's account was not subject to charge because the claimant had been discharged for disqualifying reasons. A telephone hearing was held on January 7, 2010. The claimant participated in the hearing. Doug Rolfs, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer the spring of 2009. The claimant worked as an over-the-road truck driver.

On September 7, the claimant had emptied his load and was driving to Yakima, Seattle, to pick up his next load. The claimant was going the speed limit, 60 mph. The sun blinded the claimant so he did not initially see a truck ahead of him. When the claimant saw the truck, he did not see any flashing lights. Washington requires drivers to put on flashing lights when going less than 40 miles an hour.

By the time the claimant realized the truck in front was going very slowly, he decided he could not safely pass the truck. The claimant decided to run into the back of the truck ahead of him. The claimant received a citation for following too close. The employer's truck was totaled in the accident. The employer's insurance company informed the employer that as a result of the accident the claimant would no longer be covered under the employer's insurance policy. Although the claimant's job was not in jeopardy before the accident, the employer discharged the claimant on September 7, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Based on the circumstances surrounding the September 7, 2009 accident, the evidence shows the claimant was at fault for the accident. However, the facts do not establish that he drove so carelessly or negligently that he intentionally disregarded the employer's interests. He may have used poor judgment when he hit the slow-moving truck instead of trying to pass it or followed the truck too closely, but the facts do not establish that the claimant committed work-connected misconduct. Therefore, as of October 25, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's November 24, 2009 decision (reference 02) is reversed. The employer discharged the claimant for justifiable business reasons. The claimant did not, however, commit work-connected misconduct. As of October 25, 2009, the claimant is qualified to receive benefits. If the employer becomes a base period employer, its account may be subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css