

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD G PRY
Claimant

APPEAL NO. 07A-UI-02658-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

REGIONAL TRANSIT AUTHORITY
Employer

**OC: 02/18/07 R: 01
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 12, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 2, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Rose Lee participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time as a bus driver for the employer from December 26, 2000, to February 21, 2007. The claimant was informed and understood that under the employer's work rules, drivers were subject to discharge if they accumulated ten points for preventable accidents.

On May 8, 2006, the claimant was waiting in a line of vehicles stopped at a stop sign to cross an intersection. The driver of the car in front of him put her car in reverse and backed into his bus. The bus was not moving at the time. The claimant exited the vehicle to see if there was any damage to either vehicle, and there was none. He asked the driver if she was all right and she responded that she was fine. When the claimant suggested that they needed to report the accident, the driver stated she was scheduled for an out-of-town doctor's appointment and did not have time. Later that day the claimant made a written report about the accident. The woman discovered that the license plate from the bus had gotten caught on her bumper. The claimant had to retrieve the license plate from the police department. The employer assessed four points against the claimant for what the employer considered to be a preventable accident and three points for failing to immediately report the accident to a supervisor. The claimant received a written warning informing him that if he accumulated ten or more points, he would be terminated.

On February 12, 2007, the claimant was driving his bus in Hawarden, Iowa. It had recently snowed and there was an accumulation of snow on the ground and on the street. The claimant stopped at an intersection and looked both ways to make sure the intersection was clear before he drove through it. The crossing street was a through street. Before clearing intersection, the claimant was struck in the rear of the bus by a car on the through street. The vehicle in question was white and the claimant had not seen the vehicle coming when he entered the intersection. As a result of the accident, both the bus and the car were totaled. The driver and passenger of the car required medical treatment. The claimant received a traffic ticket for failing to obey the stop sign.

The claimant received ten points for having a preventable accident with an injury. Consequently, the employer discharged the claimant on February 21, 2007, based on the two accidents, which resulted in the claimant exceeding ten points under the employer's accident policy.

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.

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 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 substantial and 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).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established. No willful and substantial misconduct has been proven in this case. The first incident in May 2006 was not the result of any fault by the claimant other than perhaps not reporting it sooner. The final incident was at most an isolated incident of ordinary negligence, which would not rise to the level of willful misconduct in culpability.

DECISION:

The unemployment insurance decision dated March 12, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw