

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES T PARK
Claimant

APPEAL NO. 14A-UI-03552-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

**OC: 03/02/14
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 1, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on April 23, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Dan Biddulph. Brenda McNealey participated in the hearing on behalf of the employer with a witness, Dave Zohner. Exhibits One through Seven and A through C were admitted into evidence.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as a truck driver for the employer from July 13, 2010, to March 5, 2014. He received a warning letter on May 25, 2013, for striking a gate at a terminal. He received a warning letter on August 23, 2013, after he was cited for improper seatbelt usage. On October 11, 2013, he was placed on probation for allegedly failing to properly secure a load on September 13, which led to a cargo damage claim from a customer. The claimant was the driver who picked up the load but another driver delivered it to the customer. He had loaded the cargo according to company policy, including placing load locks on the cargo, but he was still considered to blame for the damage. He was informed that further incidents during this probationary period could result in his termination.

On March 1, 2014, the claimant was turning into the entrance at the employer's terminal in Missoula, Montana. There was snow and ice on the highway and the entrance road leading to the terminal. Snow filled the ditches on the sides of the roadway making it difficult to detect the edges of the road. After making the turn, the truck slid to the right with front passenger-side wheels of the truck tractor going into the ditch. The claimant was driving slowly when he made the turn but had to apply some gas to drive through the snow that was on the road. The claimant and other employees had to dig out the tires to get the truck out of the ditch.

On March 6, 2014, the employer discharged the claimant for unsatisfactory safety performance based on the incident on March 1, 2014, and his past disciplinary history was described above.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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. After considering the weather and road conditions, I cannot conclude the claimant had repeated negligence of such a degree of recurrence that it equals willful misconduct in culpability. Such negligence would have to rise to the level of a reckless disregard for safety, which I cannot conclude occurred here.

DECISION:

The unemployment insurance decision dated April 1, 2014, 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/css