

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: 06A-UI-03374-DWT
OC: 02/19/06 R: 03
Claimant: Appellant (2)

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:

Leon W. Gardemann (claimant) appealed a representative's March 17, 2006 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of West Side Transport, Inc. (employer) would not be charged because the claimant had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 27, 2006. The claimant participated in the hearing with his attorney, Todd Weimer, and his wife, Marlene Gardemann. Barb Teply, the director of claims; Laura Watson, the claims administrator; Tim Whitney, the safety director; and Will Miers, the executive human resource manager, appeared on the employer's behalf. During the hearing, Employer's Exhibit One through Three were

offered and admitted as evidence. 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 on January 30, 2002. The claimant worked about 30 hours a week as a parts runner, errand runner and general maintenance. The majority of the claimant's work day involved driving the employer's vehicle.

On February 15, 2004, the claimant operated some of the employer's heavy equipment and hit an employee's parked vehicle. On June 16, 2005, the claimant hit a vehicle that was turning left when the claimant tried to go around the vehicle. Police were not contacted for the June 16 accident. Even though the employer considered both accidents preventable, the employer did not warn the claimant that his job was in jeopardy.

The claimant's driver's license expired in August 2005. The claimant did not realize his license expired in August. The claimant did not know he had been driving on an expired license until February 6, 2006, when he looked at driver's license after he was involved in another accident.

On February 6, the claimant was traveling east in the employer's vehicle when the vehicle in front of him engaged its brakes and attempted to turn right. The claimant attempted to avoid hitting the vehicle in front, but hit the trunk of the vehicle. This car then hit another vehicle that was waiting in a side driveway to pull out into the traffic. The claimant received two citations, one for failing to maintain control of his vehicle and one for not having a valid driver's license. The February 6 accident involved not only property damage but also personal injuries to the drivers of the two vehicles.

As a result of the three accidents that increased in damages and severity of the damage in addition to the citations the claimant received on February 6, 2006, the employer discharged the claimant on February 8, 2006.

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).

The claimant had three accidents in three years. Based on business reasons, the employer was justified in discharging the claimant. The employer concluded the accidents were preventable and the damage caused by the accidents increased with each accident. Also, the employer's insurance company was going to review the claimant's record on March 1, 2006, when the employer's insurance policy had to be renewed.

Even though the employer established business reasons for discharging the claimant, to be disqualified from receiving benefits the claimant must commit work-connected misconduct. For business reasons one accident a year may be too many and may amount to negligence on the

claimant's behalf. The facts show the claimant did not intentionally cause accidents. If the accidents occurred as a result of the claimant's negligence, the facts do not establish that the claimant was negligent to the extent that he committed work-connected misconduct.

The claimant drove without a driver's license. The facts establish the claimant did not realize he had to renew his license in August 2005. The claimant had no reason to look at his driver's license until the day of the third accident on February 6, 2006. It was not until this day that the claimant realized he had been driving without a valid driver's license. Again, this results in a justifiable business reason for discharging the claimant, but the claimant did not intentionally fail to renew his license. The claimant did not commit work-connected misconduct. As of February 19, 2006, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's March 17, 2006 decision (reference 01) is reversed. The employer discharged the claimant for compelling business reasons that do not constitute work-connected misconduct. As of February 19, 2006, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/