

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL M WOODEN

Claimant

APPEAL NO: 13A-UI-04737-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC

Employer

OC: 93/17/13

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 12, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge. The claimant participated in the hearing. Brenda McNealey, the vice president of human resources, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in May 2010. He worked full time as an over-the-road truck driver. Prior to March 12, 2013, the claimant's job was not in jeopardy and he received safety bonuses.

During his employment, the claimant was involved in some accidents. The first one occurred on August 17, 2011. When the claimant was driving in Chicago and made a right-hand turn on a crowded street, he accidentally hit a parked car. The employer concluded this was a preventable accident and required the claimant to take a driver training class. The employer also placed the claimant on probation for six months. The claimant did not have any more accidents until July 25, 2012. On July 25 the claimant was at a truck stop in Omaha. At the truck stop the claimant made a left-hand turn and hit a concrete pillar. The only damage was a bent tire rim. There was no damage to the tire or the concrete pillar. On August 12, 2012, when the claimant was backing up in the dark, he hit a door and knocked off a yellow marker light on the trailer. On August 19, when the claimant was backing up his trailer, he hit light pole. The light pole was not damaged and the bumper on the truck was slightly damaged. The claimant did not receive any warnings for the accidents in July and August 2012.

On March 12, 2013, the claimant was driving in inclement weather. One side of the road was snow and ice covered. The claimant was driving on the passing lane traveling 55 to 60 miles an hour when a gust of wind caught his empty trailer. When the claimant felt the trailer go sideways he did not apply his brakes because he was traveling on ice. When he was able to get to the shoulder of the road he tried to get the truck under control, but it jackknifed. The claimant did not receive any traffic citation.

When maintenance personnel examined the truck, they discovered the cruise control was on and Jake brake switches were on. The claimant always has the cruise control on, but was not using it or the Jake brakes on March 12. Since the cruise control and Jake brake switches were on, the employer concluded the accident was preventable.

On March 15, 2013, the employer discharged the claimant for having too many preventable accidents or unsatisfactory safety performance.

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). 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer discharged the claimant for business reasons. On March 12, the claimant may have used poor judgment when he drove in adverse weather conditions. Even though the employer concluded the claimant lost control of his truck because he had the cruise control and Jake brake switches on, maintenance personnel did not testify at the hearing. It is not known what affect a gust of wind had on the accident or what affect the cruise control and Jake brake switches had if the claimant did not use them.

On March 12, the claimant was involved in an unfortunate accident which he tried to prevent. Even if he used poor judgment or was negligent, the evidence does not establish that he was negligent to the extent that he intentionally and substantially disregarded the employer's interests. The claimant did not commit work-connected misconduct.

DECISION:

The representative's April 12, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of March 17, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs