

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

Appeal Number: 04A-UI-00728-A
OC: 12-21-03 R: 02
Claimant: Respondent (1)

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.

WAYNE J MESSLER
1122 HARRISON ST
BOONE IA 50036

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.

ADM TRUCKING INC
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

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.

JACK PENNINGTON
ATTORNEY AT LAW
4949 PLEASANT STE 101
WEST DES MOINES IA 50266

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2a - Discharge

STATEMENT OF THE CASE:

ADM Trucking, Inc. filed a timely appeal from an unemployment insurance decision dated January 13, 2004, reference 01, which allowed benefits to Wayne J. Messler. After due notice was issued, a hearing was held in Des Moines, Iowa, on April 12, 2004 with Mr. Messler participating and being represented by Jack Pennington, Attorney at Law. Exhibits A through J were admitted into evidence. Transportation Terminal Manager Scott Jones participated for the employer. Employer's Exhibits 1 through 9 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Wayne J. Messler was employed by ADM Trucking, Inc. as an over-the-road driver from July 8, 2002 until he was discharged December 17, 2003. The events which led to his discharge occurred on December 16, 2003. At approximately 10:02 a.m. Mr. Messler was pulling out of a private drive onto a street in Mason City, Iowa. There had been freezing rain and approximately an inch of snow the night before. Mr. Messler lost traction for a split second. As he turned to the west, a driver approached from the east and slid into the rear of Mr. Messler's trailer. A law enforcement officer investigated the accident and did not issue tickets to either driver.

Mr. Messler's vehicle was equipped with an electronic recording device for maintaining the logs required by the Federal Motor Carriers Administration. Mr. Messler had inadvertently failed to push the button to start the recording device before leaving the customer's yard. When the company realized this, it discharged Mr. Messler for the accident and for failing to have the logging device in operation.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Messler was discharged for disqualifying misconduct. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof. See Iowa Code Section 96.6-2. Deliberate actions contrary to an employer's interest or repeated acts of carelessness or negligence constitute misconduct. The employer's witness expressed the opinion that Mr. Messler deliberately failed to engage the electronic recording device. The basis for his opinion was that Mr. Messler had made the same error in the past. Mr. Messler denied under oath that he had any reason to falsify his logs and that the only reason he had not yet turned on the device was his concern for the weather and road conditions. His testimony is credible. The administrative law judge concludes that willful misconduct has not been established. While repeated acts of carelessness or negligence may constitute misconduct, simple errors and isolated instances or poor performance are not sufficient to establish disqualifying misconduct. Noting the weather and road conditions and noting that Mr. Messler was not ticketed for the accident, the administrative law judge concludes that the accident was not the result of negligence or carelessness. He also concludes that the failure to engage the electronic recording device was a simple error, not a negligent or careless error. While the events of December 16, 2003 may have constituted just cause for the discharge, they do not descend to the level needed to establish disqualifying misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated January 13, 2004, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/b