

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DARRYL PRUITT**

Claimant

**APPEAL NO: 14A-UI-10468-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R & L CARRIERS SHARED SERVICES LLC**

Employer

**OC: 08/31/14**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 3, 2014, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 29, 2014. The claimant participated in the hearing. Loree Fauley, Human Resources Supervisor and Ed Bosley, Service Center Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time city class A driver for R & L Carriers Shared Services from July 22, 2014 to September 3, 2014. He was discharged for having two accidents during his first 90 days of employment.

On July 28, 2014, the claimant was making a delivery at Westco and while backing the semi-trailer into the dock he did not realize Westco has self-set dock plates. The dock plates rise up when the driver is backing in to the dock and drop down with the pressure of the truck against it providing a way for a forklift to be driven in and out of the semi-trailer. The claimant had never unloaded at a self-set dock and was not aware he had to get out and open the trailer's door so when he backed up and the plate dropped down it would not damage the trailer door. Consequently, when the plate lowered it went through the back door of the semi-trailer because the claimant did not know he had to open the trailer door. He heard a "crunch" and observed the deck plate had knocked the semi door in at the bottom. He called Service Center Manager Ed Bosley and explained the situation and told Mr. Bosley he could not get the trailer door open following the incident. Mr. Bosley instructed the claimant to bring the trailer back to the shop and they would take care of it. Usually, when the claimant makes a delivery, he gets out of the semi and goes in to open the garage door and hooks them open before opening his semi-trailer door. Following that accident the claimant always exited his truck and looked at the set-up before backing his trailer in.

On August 14, 2014, a customer from Napa called the local terminal to report the claimant damaged its dock pad, causing approximately \$2,000.00 in damage. The claimant went in to the building and a Napa employee who assigned the claimant a door came into the building and accused the claimant of "crushing" the door skirting and the claimant said he did not know if he caused the damage or if it was already there before he arrived. Once the employer learned of the accident it instructed the claimant to report it to the employer's corporate safety department in Ohio and the claimant did so August 18, 2014. The employer was then notified by the safety department September 3, 2014, it had to terminate the claimant's employment.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proving disqualifying misconduct. 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).

The first accident at Westco occurred because although the claimant had been driving truck for nine years he had never encountered self-set deck plates before and did not know he had to get out and open the trailer door, get back in his truck and back up a little further at which time the deck plate would drop down creating a gateway between the warehouse and the claimant's trailer. As a result of the deck plate coming down the claimant's trailer door was damaged as it went through the back door of the trailer. After learning about self-set deck plates following that incident the claimant always checked for that equipment before backing in.

On August 14, 2014, the claimant was accused of tearing up dock padding at Napa when making a delivery there. A Napa employee made the allegation but the claimant did not feel, see or hear anything that indicated he hit the dock padding and he thought it was just as likely that the damage was already done before his delivery. Consequently, he did not report the situation to the employer. When the Napa employee reported it to the employer the claimant was instructed to notify the safety department in Ohio and did so. He also reported the first incident at that time because he was unaware he had to do so following the earlier accident.

While the first incident was unfortunate and could be attributable to ordinary negligence, mere negligence does not equal misconduct. The claimant was in an unfamiliar situation and made an error. There is no evidence of intentional misconduct regarding the July 28, 2014, incident. The August 14, 2014, situation cannot be definitively linked to the claimant. Although he was there, he credibly testified he did not see, feel or hear anything indicating he hit or damaged the dock pad. There is not enough evidence to conclude it is more likely than not that the claimant hit the dock pad. Under these circumstances, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The October 3, 2014, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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