

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANE DOMINQUE
Claimant

APPEAL NO: 07O-UI-08126-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

J B HUNT TRASNPOR
Employer

OC: 06-03-07 R: 04
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 25, 2007, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 25, 2007. The claimant participated in the hearing. Scott Garrett, Operations Manager and Sandy Fitch, Employers Representative, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

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 over-the-road truck driver with J B Hunt from April 18, 2005 to April 11, 2007. On April 10, 2007, the claimant had a DOT preventable rear-end accident. He admits he was following too closely because he had become more comfortable as a driver and the pick-up truck in front of him stopped short on a yellow light when the claimant anticipated he would go through the light. Regardless, he admits guilt on his part with regard to hitting the truck. The pick-up truck had to be towed away from the area so that made it a DOT preventable accident. The employer also contends the claimant did not take the required 10-hour break time for every 11 hours driven that day. The claimant believed he may not have taken the entire break but testified that he did not do so intentionally. The employer terminated him for a three strikes policy stating that if a driver has a rear-end accident, the other party has an injury, no matter how insignificant, and making the load late it will result in three strikes. The claimant had not been involved in any previous accidents and had not received any written warnings.

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.

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.

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). While the employer's decision to terminate the claimant's employment is understandable, the claimant had a rear-end collision with a pick-up truck in front of him whom he believed to be running the yellow light. Although he admits he was following too closely and unintentionally ran over hours this was an isolated incident and his actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law.

DECISION:

The June 25, 2007, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css