

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS BROOKS**  
Claimant

**APPEAL NO. 11A-UI-08940-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEYL TRUCK LINES INC**  
Employer

**OC: 06/05/11  
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Douglas Brooks, filed an appeal from a decision dated June 30, 2011, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on July 28, 2011. The claimant participated on his own behalf. The employer, Heyl Truck Lines, participated by Director of Safety Keith Pease.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Douglas Brooks was employed by Heyl Truck Lines from April 20, 2009 until June 2, 2011, as a full-time regional driver. From April 16, 2010 until June 2, 2011, he was involved in seven accidents and all of them were determined to have been preventable. In addition, he was cited in Kansas on April 2, 2011, for reckless driving, a ticket he did not report to Safety Director Keith Pease. The employer found out about it on May 16, 2011, when Kansas authorities sent a notice to the employer requesting a response to the citation.

On that day Mr. Pease gave a performance evaluation to Mr. Brooks where his accident history was discussed with him. After every accident there was a form of “retraining” on how to avoid such accidents but the problems did not improve. Mr. Pease informed the claimant at that time he was “on thin ice and the sun was shining.” He was told any further accidents would lead to discharge.

On June 2, 2011, Mr. Brooks was involved in another accident where he struck another vehicle on the side, causing it to “spin out.” The accident was reported and Mr. Pease did another review of the claimant’s file. The decision was made to discharge him for another accident and he was notified by phone.

**REASONING AND CONCLUSIONS OF LAW:**

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 claimant had been advised his job was in jeopardy as a result of his many accidents. The employer's attempts to retrain the claimant and coach him on how to avoid these accidents, were not successful. The accidents continued in spite of the employer's efforts to retain Mr. Brooks as a driver. While the accidents were not intentional or willful, it is evidence of carelessness and negligence of such a degree as to constitute willful misconduct and the claimant is disqualified.

**DECISION:**

The representative's decision of June 30, 2011, reference 01, is affirmed. Douglas Brooks is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/css