

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARD J BRILEY
Claimant

APPEAL NO. 09A-UI-04537-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GRAND RIVER CATTLE CO
Employer

OC: 02/22/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Grand River Cattle Company filed a timely appeal from an unemployment insurance decision dated March 12, 2009, reference 01, that allowed benefits to Leonard J. Briley. After due notice was issued, a telephone hearing was held April 15, 2009 with Mr. Briley participating. Justin LaVan, Attorney at Law, appeared on behalf of the employer. Adrian Wolfe and Bernie Siek testified. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

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: Leonard J. Briley was employed by Grand River Cattle Company from June 28, 2007 until he was discharged February 17, 2009. He worked as a feed truck driver. Mr. Briley was involved in an accident caused by weather conditions on January 10, 2009. He did not receive a citation for that accident. The accident cause the employer's insurance company to review Mr. Briley's driving record. After finding seven violations in 2004 and 2005, before Mr. Briley was employed by Grand River Cattle Company, the insurance company advised Grand River that it would no longer insure Mr. Briley. As a result of this he was discharged.

REASONING AND CONCLUSIONS OF LAW:

The question is whether Mr. Briley was discharged for misconduct in connection with his employment.

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.

In Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), the Supreme Court of Iowa considered the case of an individual who had been discharged because the employer's insurance company would no longer offer coverage for him because of accidents and moving violations that occurred on and off duty but during the time of Mr. Cook's employment. The Supreme Court found that the discharge was for misconduct in connection with the employment.

The facts of this case are different in two significant matters. First of all, all of the violations occurred several years before Mr. Briley was hired by Grand River. Since he could not have foreseen in 2004 and 2005 that these violations could have an effect on his employment with Grand River, the administrative law judge cannot conclude that those violations were misconduct in connection with the employment. In addition, the accident in January 2009 did not result in a citation. At most, the accident represents a single act of carelessness or negligence. The definition of misconduct set forth above states that repeated acts of carelessness or negligence may be considered the equivalent of willful misconduct. The administrative law judge concludes that the single accident that did not lead to a citation is insufficient to establish disqualifying misconduct in connection with the employment. Benefits are allowed.

DECISION:

The unemployment insurance decision dated March 12, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css