

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAUL SILORO**  
Claimant

**APPEAL NO: 09A-UI-11019-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**S T S TRANSPORTATION**  
Employer

**OC: 06/28/09**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

S T S Transportation (employer) appealed a representative's July 27, 2009 decision (reference 01) that concluded Raul Siloro (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 17, 2009. The claimant participated in the hearing. Al Hellenthal appeared on the employer's behalf. Ike Rocha served as interpreter. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on August 12, 2008. Since about February 2009 he worked full time as a spotter/driver at the employer's West Branch, Iowa warehouse location. His last day of work was June 19, 2009. The employer suspended him that day and discharged him on June 24, 2009. The reason asserted for the discharge was having multiple accidents in two months that the employer concluded were reasonably preventable.

On April 2 the claimant had made a quick turn to the right without looking closely in all directions and apparently driving too fast, running into another truck tractor; for this he was given a warning on April 8. On May 28 he failed to secure a trailer door, which then opened while the trailer was backing into the dock and hit on another trailer. For this he was given a further and final warning on June 3.

On June 19 the claimant was pulling a trailer away from the dock; after about 50 feet, he made a turn. The tractor's fifth wheel was not properly clamped onto the trailer king pin, so when the tractor turned, the tractor separated from the trailer and the trailer slammed against the concrete. The employer maintained that had the claimant performed a tug/pull test by setting the breaks on the trailer and then attempting to pull the trailer away from the dock in order to

check the lock between the tractor and the trailer, he would have immediately discovered that the jaws had not fully grabbed the king pin. However, the claimant's supervisor had taught him a different method of doing a tug/pull test, simply pulling eight to ten feet from the dock and seeing if the connection held. The claimant did do this on June 19; however, this test is not truly adequate to catch situations where the fifth wheel jaws do not fully grab the trailer king pin. He had not been instructed that he had to do the test in the manner preferred by Mr. Hellenthal, the safety and human resources director. Because of the failure to detect that the lack of a good lock between the tractor and trailer until the two separated with the trailer slamming down to the concrete, and due to the prior incidents, the employer discharged the claimant.

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

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant is the incident on June 19 after the prior recent incident. Based upon the evidence provided, the claimant performed the connection test on June 19 in the manner he had been instructed by his supervisor as he had not been instructed that he should do in the manner preferred by Mr. Hellenthal. Under the circumstances of this case, the incident was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's July 27, 2009 decision (reference 01) is affirmed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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