

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KENNTH M ENNIS**

Claimant

**APPEAL NO. 10A-UI-09771-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHRADER EXCAVATING & GRADING CO**

Employer

**Original Claim: 11/22/09**

**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated June 29, 2010, reference 02, which denied benefits based upon his separation from Schrader Excavating & Grading Company. After due notice was issued, a telephone hearing was held on August 24, 2010. The claimant did participate. The employer participated by Ms. Michelle Moorehead. Exhibits A through D were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Kenneth Ennis was employed as a full-time dump truck driver for Schrader Excavating & Grading Company from April 2010 until June 2, 2010, when he was discharged for repeated acts of carelessness that caused substantial damage to company equipment. Mr. Ennis was paid by the hour. His immediate supervisor was Gene Davidson.

Mr. Ennis was discharged after it was determined that he had wedged the fuel tank on the company truck that he was driving under the truck, causing substantial damage to it, on or about June 2, 2010. The claimant had been instructed to back over a curbed area and had assumed the a scraping noise emitting from underneath the truck each time was due to the truck's undercarriage making contact with the ground. Mr. Ennis did not leave the truck to observe the cause of the noise but continued to back in the same manner each trip. Subsequently, it was determined that the manner that the claimant was backing the unit had caused damage to the truck's large external fuel tank.

The previous week, Mr. Ennis had been involved in an incident where a tractor trailer dumping unit that he was operating had tipped over while being emptied, causing the tractor trailer unit to rest on its side, resulting in substantial damage. The incident had occurred when the claimant apparently had backed onto a dumping area at an angle. When the claimant began to dump the

load of broken concrete and raised the dump box, the severity of the angle was increased, causing the tractor trailer unit to roll over onto its side. At the time of that incident, the claimant's immediate supervisor had reassured Mr. Ennis he would not be discharged at that time.

It is the claimant's position that he did not intentionally cause the damage to company equipment in either instance and believed that he was following instructions given to back onto unloading areas.

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

The question before the administrative law judge is whether the claimant engaged in carelessness or negligence of such a degree or reoccurrence so as to manifest culpability under the provisions of the Iowa Employment Security Law. It does.

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 this matter, the evidence establishes that Mr. Ennis was involved in two serious incidents that caused substantial damage to company equipment due to negligence or carelessness on his part. During the final incident, the claimant did not exit the truck to determine what was causing a scraping sound to emit from under the truck each time he backed into a particular area. Subsequently, it was determined that the claimant's method of backing had caused substantial

damage to the dump truck's fuel tank due to the claimant's repeated striking of an object while backing.

Approximately one week before, the claimant had cause substantial damage to a company tractor trailer dumping unit when he had backed at an angle to unload broken concrete. The effect of the angle was increased when the dump trailer's bed was raised, causing the momentum to shift and to roll the tractor trailer unit over. Although the claimant had been reassured by his supervisor at that time that he would not be discharged for the first incident, the company did not envision that Mr. Ennis would be involved in another incident causing substantial damage due to his carelessness. A decision was made to terminate Mr. Ennis after his involvement in the second incident within a one-week period.

The administrative law judge concludes that the claimant did not intentionally cause the damage to the company equipment during these two incidents but also concludes that the claimant's negligence or carelessness was of such a degree of reoccurrence so as to manifest culpability under the provisions of the Iowa Employment Security Law. The claimant's reoccurring negligence or carelessness was contrary to the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Employment Security Act. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated June 29, 2010, reference 02, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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