

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN MALONE
Claimant

APPEAL NO: 11A-UI-16034-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

**OC: 11-13-11
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 7, 2011, 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 January 20, 2012. The claimant participated in the hearing. Jesse Houseman, Terminal Manager, participated in the hearing on behalf of the employer.

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 local truck driver for Ruan Transport from February 13, 2008 to October 31, 2011. The employer considers all occurrences, performance based or attendance, together in making a determination of when to discharge an employee. When an employee reaches four occurrences his employment is terminated. On May 9, 2011, the claimant received a written warning for bobtailing because he was driving a truck without a trailer and an airline was hanging down. The claimant stated the airline must have fallen down when he crossed the railroad tracks approximately one block away from his destination. The warning also stated the claimant was observed turning into a lot without signaling. On May 14 and June 11, 2011, he received written warnings and three-day suspensions for no-call/no-shows, which resulted in two additional occurrences. The claimant disputes that he was a no-call/no-show May 14, 2011, stating it was a weekend job and he did not receive a text from his lead person telling him he was supposed to work that day. He was not certain about the circumstances surrounding the June 11, 2011, absence. On October 27, 2011, the claimant opened the trailer doors and secured them with the required chain and bungee cord before backing into the loading dock. The chain broke and the bungee cords were not taunt enough to hold the doors against the sides of the trailer and consequently the door hooked the trailer next to him when he pulled forward and the hinges to the door broke. The claimant called to report the incident and stated the chain broke and the door “flew open” which indicated to the employer that the bungee cords were not used at all as required. The claimant denies that

charge and states he did use the bungee cords when securing the doors to the sides of the trailer. The employer determined that was the claimant's fourth occurrence and his employment was terminated October 31, 2011.

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 claimant accumulated four occurrences, two were attendance related and two were performance related. Two no-call no-shows, while definitely worthy of written warnings and suspensions, do not constitute excessive unexcused absenteeism. Three no-call/no-shows within a 12-month period would rise to the level of disqualifying job misconduct. The May 9, 2011, incident was accidental in nature and there was no intentional job misconduct involved. With regard to the

October 27, 2011, the employer did not have sufficient evidence to prove the claimant did not use the bungee cord as required and he testified he did secure the door with a bungee cord. Although it would appear he did not do so because the door "flew open," the employer was not a first-hand witness to the incident and thus cannot prove he did not use the bungee cord. This situation, while serious, was not substantial or intentional wrongdoing and consequently does not meet the standards for establishing disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The December 7, 2011, 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