

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY H DAVIS

Claimant

APPEAL NO. 12A-UI-02194-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DON HUMMER TRUCKING CORP

Employer

OC: 01/08/12

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 23, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on March 20, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Dena Boelter participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked as an over-the-road truck driver for the employer from April 29 to December 23, 2011.

Early in the morning on December 16, 2011, the claimant was driving on a highway in Texas. He changed lanes from the right-hand lane to the left-hand lane and then turned left across the left-turning lane. He checked his mirror before changing lanes and executing the turn but neglected to notice a pickup truck in the left lane. He turned into the pickup and they crashed into each other.

Police were called to the scene and the claimant was cited for making an unsafe turn. The pickup was totaled and the truck sustained substantial damage.

After the employer received information about the accident, the employer discharged the claimant on December 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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).

No willful and substantial misconduct has been proven in this case. At most the record shows an isolated instance of negligence, which falls short of disqualifying misconduct under the law. The case law indicates that a single act of negligence is insufficient to demonstrate "repeated negligence of such a degree of recurrence" that it equals willful misconduct in culpability. *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731 (Iowa App. 1986).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established.

DECISION:

The unemployment insurance decision dated February 23, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css