

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUANE J NELSON
Claimant

APPEAL NO: 13A-UI-03486-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHILDBERG CONST CO INC
Employer

OC: 01/20/13
Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 21, 2013 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Tim Baier, a sales manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on November 20, 2012. The claimant worked full-time as a truck driver. On March 4, 2013, the claimant was involved in an accident. The top of truck box had been left up and the claimant hit a bridge on the Interstate. The truck box also hit some power lines.

The employer concluded the claimant had not followed safety procedures by walking around his truck before he started driving. The claimant completed the safety inspection before he left and noticed the box was up on the truck. The claimant forgot to put the box down. The accident damages resulted in more than \$100,000 to the truck, the interstate bridge and power lines. As a result of the accident and the employer's conclusion that the claimant had not completed a safety check before he started driving, the employer discharged him on March 4, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant failed to complete a safety inspection by walking around his truck before he drove it on March 4, 2013. The claimant knew the box up was when he completed the safety inspection and planned to put the box down before he left, but did not. The claimant forgot to put down the box. This isolated incident, which resulted in significant damage, does not amount to gross negligence.

The employer had justifiable business reasons for discharging the claimant, but the facts do not establish that the claimant committed work-connected misconduct. As of March 3, 2013, the claimant remains qualified to receive benefits.

During the claimant's current benefit year, the employer is not one of the claimant's base period employers. As a result, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's March 21, 2013 determination (reference 02) is reversed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of March 3, 2013, the claimant remains qualified to receive benefits, provide he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll