

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTTIE L EATINGER
Claimant

APPEAL NO. 10A-UI-00687-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWNMILLER LEASING & TRANS INC
Employer

**OC: 11/22/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 7, 2010, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 23, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Dennis Mahr. Todd Brownmiller participated in the hearing on behalf of the employer.

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 May 2007 to October 21, 2009.

On August 20, 2009, the claimant was driving in New Jersey. He stopped at an intersection and then started across the intersection and down the street. He moved over to the right of the lane while checking for some paperwork. He hit the curb and the right-side mirror ran into a utility pole. The collision with the pole caused the right side mirror to pivot in. The claimant did not notice the trailer had hit the pole as well, which created a large hole in the top of the trailer. He was unaware of the damage to the trailer and pole.

Someone had noticed that the truck had damaged the pole and contacted the police who stopped the claimant. The claimant was ticketed for failing to maintain his lane, leaving an accident scene, and failing to report an accident.

The claimant reported the incident to the employer. He was warned about the accident at the end of August. He continued to work as a driver for the employer until October 21, 2009. The employer's insurance company informed the employer on October 19, 2009, that it would not cover the claimant if he continued to drive for the employer. As a result, the employer discharged the claimant.

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). In addition, 871 IAC 24.32(8) provides that while past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The claimant's discharge was the result of an isolated instance of negligence. Even if the claimant was negligent, the rules and the case law indicate 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). Work-connected misconduct as defined by the unemployment insurance law has not been established in this case. In addition, there was no current act of misconduct when the claimant was fired. The employer was aware of the accident on August 20 and had already disciplined him for it.

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 January 7, 2010, reference 03, is reversed. 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