

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JON P PELZER
Claimant

APPEAL NO. 10A-UI-04672-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEIM T S INC
Employer

**Original Claim: 02/28/10
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's March 22, 2010 decision (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. A telephone hearing was held on May 3, 2010. The claimant did not respond to the hearing notice, or participate in the hearing. Ruth Shaver, the human resource director, and Ruth Moore, the safety director, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on August 25, 2005. The claimant worked as a full-time driver.

During his employment, the claimant was involved in three incidents the employer considered preventable accidents. In May 2008, the claimant delivered some farm machinery that had been damaged on the top. No one knew how or when the farm machinery became damaged. The employer paid \$2,700.00 for delivering damaged farm machinery. On December 27, 2009, the claimant parked his truck at his residence. After the claimant had to dig the truck out of snow at his residence, there was damage to the truck's power divider. After each of these incidents, the employer talked to the claimant and told him to be careful so he was not involved in any other accidents or incidents.

On February 24, 2010, the claimant parked his truck and set the brake. The claimant went to the sleeper. While in the sleeper, the truck rolled forward. The resulting damage was \$6,700.00. The claimant reported this incident. Other trucks were parked at the same location. None of the other trucks rolled after being parked.

Moore and management concluded the claimant had too many preventable accidents and discharged him on February 28, 2010. The employer does not have a written policy indicating how many preventable accidents a driver can have before the employer discharges him.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established justifiable business reasons for discharging the claimant. Although the claimant was involved in three incidents that resulted in some damage since May 2008, the claimant did not drive or operate his truck in such a way that he intentionally created the resulting damage. The claimant may have been negligent or careless, but the facts do not establish he was negligent or careless to the extent that he committed work-connected misconduct. Therefore, as of February 28, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's March 22, 2010 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of February 28, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw