

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RICHARD L PITZER
413½ DWIGHT ST
BOSCOBEL WI 53805

AGRIPROCESSORS INC
PO BOX 920
POSTVILLE IA 52162

THOMAS BITTER
ATTORNEY AT LAW
485 LOCUST ST
DUBUQUE IA 52001

Appeal Number: 05A-UI-05360-DWT
OC: 04/24/05 R: 12
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Agriprocessors, Inc. (employer) appealed a representative's May 13, 2005 decision (reference 01) that concluded Richard L. Pitzer (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 8, 2005. The claimant participated in the hearing with his attorney, Thomas Bitter. John Bricker, the fleet manager, and Allen Handke, the fleet safety manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 in March 2004. The claimant worked as an over-the-road driver for the employer. Bricker was the claimant's supervisor.

At the time of hire, the claimant received a copy of the employer's policy regarding accidents. The policy states that if an employee accumulates 20 "driving" points within a certain time frame, the employer will discharge the employee. When an employee is involved in an accident and receives citation, the employer assesses the employee 10 points.

On October 22, 2004, a bus passed the claimant and then pulled in front of the claimant's truck. When the bus pulled in front of the claimant, the bus driver applied the bus' brakes and they locked. The claimant was unable to stop and rear-ended the bus. The claimant received a citation as a result of this accident. In early December, the October citation was dismissed. The claimant told the employer the citation had been dismissed and wanted the employer to reduce the number of points the employer had assessed against the claimant for the October 22, 2004. The employer did not reduce the number of points assessed to the claimant for the October accident.

On March 5, the claimant did not feel well. The claimant passed out right before he was involved in an accident while driving for the employer. The claimant received a citation for this accident and did not contest the charge. The claimant told the employer about the citation immediately.

The claimant did not drive after March 5 for various medical reasons. On April 26, 2005, the employer decided to discharge the claimant because he violated the employer's driving policy by accumulating 20 driving points in less than a year.

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).

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. 871 IAC 24.32(8).

The employer established business reasons for discharging the claimant. In the last six months the employer concluded the claimant had two major preventable accidents and assessed him ten points for each accident. Even though the employer had business reasons for discharging the claimant, the employer must establish that the claimant intentionally and substantially disregarded the employer's interest. The evidence does not establish that the claimant deliberately became involved in accidents on October 22 and March 5, 2005. A preponderance of the evidence does not establish that the October 22 was preventable and the initial citation the claimant was dismissed. The March 5 accident appears to have occurred because the claimant was ill and did not realize how ill he was. The facts do not establish that the claimant committed work-connected misconduct.

Also, the employer knew about the March 5 accident and the citation the claimant received for this accident almost immediately. The employer did not discharge the claimant for over a month. The employer discharged the claimant based on an incident that is not a current act. For both of these reasons, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements.

DECISION:

The representative's May 13, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute a current act of work-connected misconduct. Therefore, as of April 24, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjf