

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE R HOVLAND
Claimant

APPEAL NO. 09A-UI-06092-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 03/22/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 15, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 14, 2009. Claimant participated personally. Employer participated by Sandy Loney, Human Resources; Keith Lamfers, Safety and Compliance; Scott Myers, Fleet Manager and was represented by John Fatino, Attorney at Law. Exhibits 1 and 2 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on March 18, 2009. Claimant was discharged by the employer because the claimant had too many preventable accidents, failed to maintain logs as required by federal law and was late on too many deliveries.

The claimant had an accident on March 17, 2009. He fell asleep at the wheel and hit an exit sign. The claimant's logbooks were not up to date at the time of this accident. The claimant picked up his load late on this trip. The claimant received warnings for all three items, accidents, compliance and lateness.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. 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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct.

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

In Lee v. EAB, 616 N.W.2d 661 (Iowa 2000) the court held that the fact that a driver had an accident does not mean the driver was negligent.

The last accident on March 17, 2009 appears to be consistent with negligence. The claimant did not tell the Missouri police a car cut him off. The report states he told an officer he dozed off. A witness noticed him weaving and tried to get his attention.

The claimant had five other incidents that the employer characterized as preventable accidents. There is no evidence that the March 9, 2009 incident where the claimant got stuck and had to be towed was not shown to be negligence. One of the other incidents may have been due to icy weather. The other incidents of backing into a customer's door track and brushing other vehicles appear to be negligence.

An incident report filed on March 17, 2009 indicated the claimant's logbooks were not up to date. He received a warning for not keeping his logbook up to date in November 2008.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning failure to keep his logbooks up to date and for the accident on March 17, 2000. Claimant was warned concerning these problems with compliance with federal logbook recording and his number of accidents.

DECISION:

The decision of the representative dated April 15, 2009, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

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