

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEROY SMITH**  
Claimant

**APPEAL NO: 07A-UI-02388-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 02/26/06 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Leroy Smith (claimant) appealed an unemployment insurance decision dated February 27, 2007, reference 02, which held that he was not eligible for unemployment insurance benefits because he was discharged from O'Reilly Automotive Parts (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 27, 2007. The claimant participated in the hearing. The employer participated through Craig Gosselink, Manager. Employer's Exhibits One through Three were admitted into evidence. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time delivery driver from September 20, 1999 through January 30, 2007 when he was discharged for violating the driver policy. One subsection of the driver policy provides a system for monitoring a driver's safety record. The system tracks driving offenses such as speeding, tickets, careless and reckless driving, etc. A new driver may not have accumulated over 14 points from the three years previous to employment and an accumulation of 18 points in three years (on or off the job) results in termination, since it is evidence of bad driving habits which lead to accidents. Drivers are assessed ten points if they are in an accident in which they are determined to be at fault and the damages are over \$1,500.00. Those points drop off after three years if there are no additional accidents during that time frame. The claimant signed the driver policy on September 17, 1999 which advised him his driving record would be monitored.

He received ten points for an accident on November 13, 2004 when he was cited for making an improper left turn. The claimant made a left turn at the top of a hill and another vehicle came over the hill and ran into his truck, but the police said it was his fault. He was in a second motor

vehicle accident on January 26, 2007. The claimant pulled up to a stop sign and proceeded through when he was hit while going through the intersection. He received a traffic citation for an improper stopping violation and because of the excessive damages to the employer's vehicle, he received an additional ten points. The claimant was subsequently terminated since he was now at 20 points, which is over the company's allowable driver points.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 employer contends the claimant was discharged for violation of the driver policy but the facts demonstrate he was discharged for negligence.

Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. Henry v Iowa Department of Job Service, 391 N.W.2d 731 (Iowa App. 1986). Although the claimant did have two accidents, they were years apart and there is no evidence of a deliberate disregard of the employer's interests or his own safety. Consequently, the employer has not met its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated February 27, 2007, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs