

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN J NODGAARD**  
Claimant

**APPEAL NO. 07A-UI-09482-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SMITHWAY MOTOR XPRESS INC**  
Employer

**OC: 09/02/07 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated September 28, 2007, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on October 23, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Terri Pearson participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked for the employer as a truck driver from December 6, 2005, to September 4, 2007. The claimant was informed and understood that under the employer's work rules, drivers could be dismissed for excessive at-fault accidents.

On November 2, 2006, the claimant was traveling down a narrow rural road and was required to make a sharp turn to get on another road. The rear truck tires went into the ditch, which contained a concrete culvert. The back bumper of the truck caught on the culvert and was damaged.

On August 27, 2007, the claimant was pulling into a narrow parking space meant for trucks between two trucks. The claimant was focused on making sure the front passenger side of his truck cleared the truck to the right of him. He took his eye off the side mirror on the driver side and the back left corner of his trailer caught and bent a pipe on the tank truck to his left. The bracket holding the pipe was broken. The claimant received additional training after the accident.

On August 31, 2007, the claimant was traveling down a road when two vehicles pulled out in front of him pushing him into the middle lane. The claimant needed to get back into the right lane to turn right at the next intersection. He turned on his right hand signal and believed the

vehicle behind him was letting him back into the right lane, but the vehicle did not let him in and the trailer scraped up the hood and light on the other vehicle.

The employer discharged the claimant on September 4, 2007, for having too many at-fault accidents.

**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.

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.

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).

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. No willful misconduct has been proven in this case. Each incident involves ordinary negligence. The preponderance of the evidence does not show negligence of such a degree of recurrence that it equals willful misconduct in culpability. This would have to be negligence resembling reckless conduct in disregard of the risk of harm. No such conduct has been proven here.

**DECISION:**

The unemployment insurance decision dated September 28, 2007, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css