

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DON SCARSELLA
Claimant

SEAPORT AIRLINES INC
Employer

APPEAL NO. 14A-UI-05478-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/27/14
Claimant: Respondent (1)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Seaport Airlines, Inc. (employer) appealed an unemployment insurance decision dated May 22, 2014, (reference 02), which held that Don Scarsella (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 17, 2014. The claimant participated in the hearing. The employer participated through Hailey Orosco, Human Resources Manager. Employer's Exhibits One through Three were admitted into evidence.

ISSUES:

The issues are whether the claimant is disqualified for benefits, whether he was overpaid unemployment insurance benefits, whether he is responsible for repaying the overpayment and whether the employer's account is subject to charge.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked as a full-time pilot from August 7, 2013, through February 18, 2014, when he was discharged for gross negligence after he and his co-pilot crashed the employer's plane. The employer's plane is a Pilatus PC12 worth approximately 2.2 million dollars and the damages from the plane crash cost approximately 1.2 million dollars. It is now four months after the fact and the plane is still out of commission. The claimant and his co-pilot failed to put down the landing gear when they were landing in Salina, Kansas on February 14, 2014. The claimant was the first officer or second in command on the flight that originated in Kansas City, Missouri. He was responsible for going through the landing checklist and if the captain did not complete the steps on the landing checklist, it was the claimant's responsibility to ensure the step was completed. That was not done and the plane crashed "belly-up" but fortunately neither pilot was injured and there were no other passengers at the time.

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 § 96.5-2-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. 871 IAC 24.32(1).

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on February 18, 2014, for gross negligence when he crashed the employer's plane. What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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's negligence on February 14, 2014, cost the employer damages in the amount of 1.2 million dollars, there was no wrongful intent on his part or a deliberate disregard of the employer's interests. Consequently, while the employer had sufficient business reasons to discharge the claimant, his actions do not amount to work-related misconduct. Benefits are allowed.

DECISION:

The unemployment insurance decision dated May 22, 2014, (reference 02), is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/can