

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL C WILSON
Claimant

APPEAL NO. 12A-UI-12588-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OLYMPIC STEEL IOWA INC
Employer

**OC: 09/30/12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 18, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on November 16, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Johnna Mahoney participated in the hearing on behalf of the employer with a witness, Rita Fowler.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from October 3, 2011, to October 3, 2012.

On July 20, 2012, the claimant received a written warning because a motorist had called the employer and reported that the claimant was weaving on the road and had fallen asleep. The claimant was not falling asleep on the day in question or driving recklessly.

On August 7, 2012, the claimant was verbally warned about being uncooperative when his truck was being loaded. The claimant was trying to make sure that the truck was being loaded properly so it could be driven safely.

On August 20, the claimant was backing a truck into a dock area. There was no sign visible with the height of the opening. The claimant was assured by a dock employee and supervisor that the trailer would clear. The back of the trailer fit through the doorway opening, but the top of the bulkhead got caught and damaged. The claimant received a written warning for this.

On October 1, 2012, the claimant had backed the trailer into a dock area. There was a dumpster located right outside the doorway. While the truck was being loaded, someone threw a piece of metal into the dumpster that protruded from the dumpster. When the claimant pulled out from

the dock, the metal caught and ripped the trailer tarp. The claimant was unaware of the protruding metal.

On October 3, 2011, the employer discharged the claimant for destruction of company property because of the damaged tarp and other incidents.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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, 11 (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).

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about the final two incidents. On August 20, the claimant reasonably relied on two employees who told him he would clear. It is difficult to see how the claimant can be faulted for not checking the dumpster to make sure nothing was sticking out.

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 and substantial misconduct has been proven in this case. No repeated negligence equaling willful misconduct in culpability has been proven.

DECISION:

The unemployment insurance decision dated October 18, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs