

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEVIN R SLAUGHTER
Claimant

APPEAL NO. 13A-UI-04183-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARTERS LEASING INC
Employer

OC: 06/03/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct.

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated March 28, 2013, reference 03, which held that the claimant was eligible for unemployment insurance benefits. After due notice, an in person hearing was held on August 5, 2013, in Cedar Rapids, Iowa. The claimant participated personally. The employer participated by Jason Hazel, Driver Supervisor, and Chad Carter, Supervisor. The record consists of the testimony of Jason Hazel; the testimony of Chad Carter; the testimony of Devin Slaughter; and Employer's Exhibits 1-10.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer does waste removal and trash hauling. The claimant was hired on January 2, 2013. He initially drove a container truck and was then transferred to driving a rear load collection route. He was a full-time employee. His last day of work was March 7, 2013. He was terminated on March 7, 2013.

The incident that led to the claimant's termination occurred on March 4, 2013. The claimant had backed his truck into a driveway to pick up a container. When he came out of the driveway, the levers on the garbage truck struck a vehicle and caused significant damage to the windows and body of the vehicle. The accident was investigated by the Coralville Police Department. The claimant was not issued a ticket. The employer concluded that there was no reason for the accident to have occurred. The claimant, in the employer's opinion, lacked attention to detail and that serious consequences could have occurred if the claimant had hit an individual.

The claimant had no prior record of accidents. He was given several warnings concerning timely paperwork and changing a route without permission of management.

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.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The legal definition of misconduct excludes errors of judgment or discretion or simple negligence in isolated instances. The employer has the burden of proof to show misconduct.

The claimant is eligible for unemployment insurance benefits. The claimant was terminated because he side-swiped a vehicle while driving a company truck. The levers on the truck hit a vehicle causing damage to the windows and body of the vehicle. The claimant clearly caused the accident. But there is no evidence that he drove his truck in a reckless manner or that he deliberately intended to damage the other vehicle. There is no history of poor driving nor is there evidence he was involved in other accident. Rather the most reasonable inference from the evidence is that the claimant was negligent in an isolated instance. This may be good grounds for termination but it does not meet the legal definition of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 28, 2013, reference 03, is affirmed. Unemployment insurance benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css