

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WENDELL SCHMITZ
Claimant

APPEAL NO: 14A-UI-02283-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

RUAN TRANSPORT CORP
Employer

OC: 02/02/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 20, 2014, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 24, 2014. The claimant participated in the hearing. The employer sent a letter indicating it would not be participating in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road trucker for Ruan Transport from August 14, 2009 to February 3, 2014. He was discharged for accumulating three accidents within a one year period of time.

In March 2013 the claimant was in the yard taking a tractor to a trailer when he slid into another trailer and did minor damage to the front end of his tractor. The claimant received a written warning and acknowledges he should have been going slower given the weather conditions. Later in March 2013 the claimant was delivering to a Des Moines area Target store and arriving after midnight. He performed the walk-around of the truck before backing into the loading dock. There were lights out around the loading dock which prevented the claimant from seeing as well as he needed to and consequently he did not see a hazard and backed into the dock and when the trailer touched the dock it pushed the dock plate upward which damaged the latch on the dock door. The employer determined it was the claimant's error.

On January 31, 2014, the claimant conducted his pre-trip tractor inspection before hooking the trailer to the tractor. He then conducted his pre-trip inspection of the trailer. As the claimant pulled away the trailer dropped onto the truck frame. There was no damage done to either the tractor or trailer. The employer determined the claimant failed to perform a proper pre-trip inspection of the trailer and hook up. The claimant disagreed as he had done both pre-trip

inspections and believes it is possible the trailer dropped because of a mechanical failure due to the extremely cold weather.

The claimant self-reported each of the above incidents to the employer. The employer determined he had three at fault accidents within a 12-month period and terminated his employment February 3, 2014. The claimant performed his job to the best of his ability and did not know his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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 of proving disqualifying misconduct. 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).

The claimant took responsibility for the incident in March 2013 when his tractor slid into a trailer while he was driving on a sheet of ice but reasonably argues the final two situations could not fairly be attributed to him. The Target store he was delivering to in March 2013 was missing several lights in the loading dock area which made it difficult for him to see the loading dock he was backing into and resulted in his failure to see a hazard that he then struck while backing in. The claimant credibly testified he performed both pre-trip inspections on his tractor and trailer January 31, 2014, before the trailer dropped onto the truck and beyond speculating that the incident was caused by an equipment failure due to the extremely cold weather he could not explain why the trailer would drop.

When misconduct is alleged as the reason for the discharge and subsequent disqualification of benefits, it is incumbent upon the employer to present evidence in support of its allegations. Allegations of misconduct without additional evidence shall not be sufficient to result in disqualification. 871 IAC 24.32(4). The employer did not participate in the hearing and failed to provide any evidence. The evidence provided by the claimant does not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. The employer has not met its burden of proof. Therefore, benefits must be allowed.

DECISION:

The February 20, 2014, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs