

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBBY J RING
Claimant

APPEAL NO: 13A-UI-06427-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAGNER TRUCKING INC
Employer

**OC: 05/05/13
Claimant: Appellant (2)**

Iowa Code § 96.5(2) - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 22, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated in the hearing. Allen Wagner, the vice president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in March 2009. He worked full time driving a truck.

During his employment, the employer talked to the claimant about accidents he had while working. About a year ago, the claimant hit a silo pipe when he was backing blindsided to dump distillers. The claimant was watching to make sure he did not hit a water hydrant and did not see a silo pipe. The trailer damage was approximately \$2,000.00, but the employer has not had this repaired. About six months before the claimant's employment ended, he was backing up a muddy lane or road. The truck slid on the mud and slid over or into a cement block. The damage to the truck was around \$500.00. The employer talked to the claimant after each accident and reminded him to be careful.

On May 2, 2013, the claimant was at an ADM plant. Railroad tracks are very close to where the truck is parked. When the claimant exited the building, he did not see a train starting to move the same time that he did. When the claimant saw the moving train, he tried to prevent an accident by speeding up to get over the railroad tracks. The train hit the back of the trailer, which resulted in \$15,000.00 damage to the trailer.

The employer discharged the claimant on May 2, 2013, for having too many accidents.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

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. 871 IAC 24.32(8).

The employer established a justifiable reason for discharging the claimant. The claimant may have been negligent on May 2, but his negligence on May 2 does not rise to the level of work-connected misconduct. As of May 5, 2013, the claimant is qualified to receive benefits.

DECISION:

The representative's May 22, 2013 determination (reference 01) is reversed. The employer discharged the claimant for business reasons, but the claimant did not commit work-connected misconduct. As of May 5, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs