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

JOSE A MIRANDA BUSTILLO Claimant **HEARTLAND EXPRESS OF IOWA** Employer	**APPEAL NO. 09A-UI-19046-SWT** **ADMINISTRATIVE LAW JUDGE** **DECISION** **OC: 11/15/09** **Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 11, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on February 8, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Jane Berger. Dave Dalmasso participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an over-the-road truck driver from January 16, 2008, to October 7, 2009.

On October 7, 2009, the claimant picked up a load of heavy metal on pallets at a customer's location. The customer loaded the trailer. As the claimant was driving the truck on an asphalt road leading away from the plant, the load in the trailer shifted. The claimant was rounding a slight curve at a reasonable speed, but due to the load shifting, the claimant lost control of the truck and trailer and they overturned on the left side of road. The damage to the truck, trailer, and load totaled over $31,000.00.

The employer discharged the claimant on October 16, 2009, based on its policy that allows a driver to be discharged for having a preventable accident with damage of $4,500.00 or more.

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 (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).

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. The evidence does not even support a conclusion of negligence, but even there was negligence it was an isolated instance of ordinary negligence, which is not disqualifying misconduct.

DECISION:

The unemployment insurance decision dated December 11, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise
Administrative Law Judge

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Decision Dated and Mailed

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