

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID J GRETHEN**  
Claimant

**APPEAL NO. 11A-UI-15214-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DFS, INC**  
Employer

**OC: 10/23/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated November 18, 2011, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on December 20, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Evelyn Ocheltree, and a witness, Cheryl Grethen. Angela Jud participated in the hearing on behalf of the employer with witnesses, Chad Bjork, Denny Schultz, Kent Nolting, and Jason Meyer. Exhibits One through Five were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a feed delivery driver from October 1, 2007, to October 18, 2011. When the claimant was hired, the employer obtained information from his former employer about his "history of past driving record," which included (1) 2-20-05 Head-on, (2) 9-13-06 merge – construction (not at fault), (3) merge – car entering I-35, and (4) 9-20-07 – entering I-94 from rest stop. The employer hired the claimant with knowledge of these incidents. On September 15, 2009, the claimant struck a guardrail on a bridge with his truck causing about \$2,500 in damage.

On October 13, 2011, the claimant was returning to the mill after delivering a load. While he was driving down the highway, the fire extinguisher, which is secured in a bracket between the driver's seat and door unexpectedly discharged and filled the cab with yellow powder. This obscured the claimant's vision. He applied the brakes but ended up colliding with the bridge guard rail before stopping.

The claimant was suspended pending investigation of the accident on October 19, 2011. He was discharged for repeated acts of carelessness or negligence while operating a commercial vehicle, including the accidents on September 15, 2009, and October 13, 2011, and the incidents reported by the claimant's prior employer.

## 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).

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.

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 incidents that occurred before the claimant started working for the employer cannot be used to show work-connected misconduct and the employer has not even shown the incidents were due to carelessness or negligence by the claimant. The two accidents over four years would not constitute carelessness or negligence that equals willful misconduct in culpability. Finally, I am unconvinced that the claimant “cooked up” the fire extinguisher story to cover up his negligence in hitting the guard rail.

**DECISION:**

The unemployment insurance decision dated November 18, 2011, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible for weeks in which he has filed valid weekly claims for benefits.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs