

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEAN E HUMBLE
Claimant

APPEAL NO. 11A-UI-09038-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEONARD EXPRESS INC
Employer

**OC: 06/12/11
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated July 6, 2011, reference 01, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 1, 2011. The claimant participated. The employer participated by Scot Taylor, director of operations. The record consists of the testimony of Scot Taylor and the testimony of Dean Humble.

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 is an over-the-road trucking operation. The claimant was hired on November 5, 2010, as a full-time over-the-road driver. His last day of work was June 13, 2011. He was terminated on June 13, 2011.

The incident that led to the claimant's termination occurred on June 11, 2011. The claimant rear ended a vehicle while driving one of the employer's trucks near Waco, Texas. There was damage to the car that was struck by the claimant. The claimant was issued a ticket for following too closely by Texas law enforcement. As a result of this accident, the employer's insurance carrier would no longer insure the claimant. A driver cannot drive for the employer if he is not insurable.

The claimant had a previous accident on November 22, 2010, in Hannibal, Missouri. The claimant rear ended a vehicle with the trailer. The claimant was ticketed for following too closely. The claimant signed a probationary agreement with his employer on December 11, 2010. He agreed that he would have a record free of driver error for twelve months.

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 disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The Iowa Supreme Court in Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980), ruled that a delivery driver who lost his insurability due to repeated traffic violations and was discharged for this reason was discharged for work-connected misconduct under the unemployment insurance law. The employer has the burden of proof to show misconduct.

In this case, the claimant was discharged after he had a second accident within seven months of employment. After the first accident on November 22, 2010, he signed a written agreement that he would have a 100 percent safety record free of driver error. He was ticketed by law enforcement after the first accident. He knew his job was in jeopardy if he had another accident. The claimant had a second accident on June 11, 2011. He again rear ended another vehicle and was ticketed by law enforcement in Texas. The employer's insurance carrier refused to insure the claimant. The claimant was then terminated.

The administrative law judge concludes that the claimant was discharged for misconduct. He lost his insurability due to repeated accidents where he was determined to be at fault. This constitutes misconduct under Iowa law. Benefits are therefore denied.

DECISION:

The representative's decision dated July 6, 2011, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw