

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLEN F TRUESDELL
Claimant

APPEAL NO. 10A-EUCU-00746-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DW ZINSER COMPANY INC
Employer

OC: 10/18/09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Glen F. Truesdell filed a timely appeal from an unemployment insurance decision dated August 6, 2010, reference 01, that disqualified him for benefits. After due notice was issued, a telephone hearing was held November 1, 2010, with Mr. Truesdell participating. Vice President Christine Zinser participated for the employer, D.W. Zinser Company, Inc. Employer Exhibit One was admitted into evidence.

ISSUE:

Was the claimant discharged for misconduct in connection with his employment?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Glen F. Truesdell was employed as a CDL truck driver by D.W. Zinser Company, Inc. from June 20, 2010, until he was discharged June 25, 2010. On June 24, 2010, Mr. Truesdell drove his company truck from a job site with the air brakes on and set in the position for the vehicle to be parked. On June 23, 2010, he had backed his vehicle into a fence, striking one pole with such force that the two adjacent poles were bent. On June 21, 2010, he drove his vehicle until it overheated. The vehicle was several gallons low on coolant. On several occasions during his brief employment, Mr. Truesdell did not mark on his time sheet that he had completed pre-trip or post-trip inspections. Such a notation is required by law. Mr. Truesdell received his CDL in 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with his employment. It does.

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.

Although misconduct is most often found in deliberate actions contrary to the employer's interests, it may also be found in repeated acts of carelessness or negligence.

The evidence in this record establishes several instances of carelessness in operating the employer's vehicles and in failing to complete required documentation. The volume of these instances in an employment that lasted less than a week is sufficient to establish misconduct. Benefits must be withheld.

DECISION:

The unemployment insurance decision dated August 6, 2010, reference 01, is affirmed. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw